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INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

2006

Coordinated by
National Alliance of Women







Supported by UNIFEM South Asia Office, The International Institute of Education , IWRAW – Asia Pacific

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INDIA
SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

(The Convention on the Elimination of all forms of Discrimination Against Women)

Coordinated by
National Alliance of Women (NAWO)

Supported by
UNIFEM South Asia Office
The International Institute of Education
IWRAW - Asia Pacific

2006

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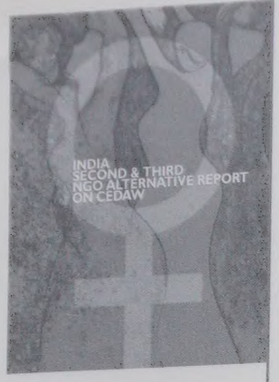
The Second and Third NGO Alternative Report on CEDAW is dedicated in awe and adoration to

Irom Sharmila Chanu

Whose frail body has been a battlefield for the human rights of the people of Manipur.

Sharmila has been on a fast unto death since November 2000 demanding the repeal of the Armed Forces Special Powers Act of 1958 which gives shoot at sight powers to the army. She has been jailed and nose fed but her indomitable spirit is a beacon of freedom for her blood drenched people.

She holds out for us the hope that violence and repression can be wiped out by peaceful resistance.


INDIA
SECOND & THIRD
NGO ALTERNATIVE REPORT
ON CEDAW

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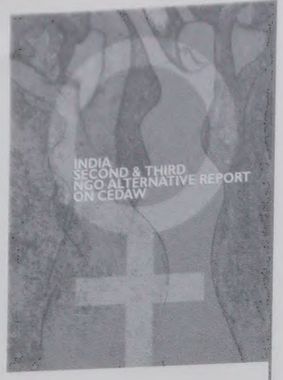
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INDIA
SECOND & THIRD
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EXECUTIVE SUMMARY

INTRODUCTION

Despite the year 2001 being declared the Year for Empowerment of Women, the status of women in India causes concern, with socio-economic indicators showing a disturbing trend - a falling juvenile sex ratio, rising levels of poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood and increased violence in all spheres. This trend cannot be viewed in isolation but needs to be seen in the light of globalization and rising caste and religious intolerance, which have given an impetus to increasing and varied forms of violence against women.

General Recommendation No. 19 of the CEDAW Committee clearly points to the fact that cultural practices/ attitudes perpetuate widespread practices involving violence or coercion and that such prejudices and practices may justify gender-based violence. Yet India has ratified the CEDAW Convention with two Declaratory statements providing that in so far as Articles 5 and 16 are concerned, it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

EQUALITY, NON DISCRIMINATION, HUMAN RIGHTS & FUNDAMENTAL FREEDOMS, SPECIAL MEASURES

Articles 14 and 15 of the Constitution of India guarantee equality before the law and non-discrimination on the basis of sex. The Declaration of the GOI to the CEDAW Convention violates the spirit of the Constitution in so far they provide that discriminatory laws shall not be dealt with unless the community wants them to be amended. Such a declaration is unconstitutional and needs to be withdrawn.

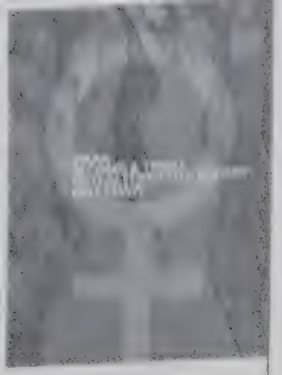
The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.

Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.

Para 20 of the II and III Report of the Government of India in response to Paras 74-75 of the Concluding Comments of the CEDAW Committee, do not address the situation of caste discrimination on the ground at all. Most worrying is the failure of judiciary in various jurisdictions to bring justice to dalit survivors of atrocities, and the fact of the state itself being a violator of Article 17 and the law banning manual scavenging.

The Mid Term Appraisal of the 10th Five Year Plan by the Planning Commission suggests that the Ministry of Social Justice and Empowerment should hold itself accountable for the persistence of manual scavenging and present an action taken report before the 2005-06 Union Budget is approved. This is an issue that must be topmost on the priority of the government, since it contributes to the persistence of the problem.

The right against discrimination as the cornerstone to human rights and fundamental freedoms as embodied in Article 3 of CEDAW, with respect to persons with disabilities [of which, according to the official estimate,



women constitute 9 million in India], must be brought within the purview of Articles 14 and 15 of the Indian Constitution.

All laws, especially relating to employment, which discriminate against or bar persons with disabilities must be repealed forthwith.

The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. The forms of gender-based violence prevalent in India include domestic violence, dowry linked violence, sexual assault, sexual harassment and sex-selective abortion, violence against dalit women, violence through the medium of the law on the persons on grounds of sexual orientation.

An analysis of the Government's performance would be incomplete without an in-depth evaluation of the legislative lacunae in the area of gender based violence and discrimination in different sectors **including the Armed Forces.**

Sexual orientation must be brought within the constitutional framework and Section 377, which criminalizes homosexuality must be repealed immediately, as a first step towards ending discrimination against queer people, in response to the demands of the queer rights movement in India and in tune with international trends in this area of human rights

The issue of starvation must be acknowledged officially and addressed through a convergence between different departments as well as initiatives in participative/deliberative democracy at the local level with respect to production and distribution of foodgrains as well as land distribution.

Despite the commitment made by the Government to the CEDAW Committee to empower the National Commission for Women (NCW), which is mandated to look into all cases of atrocities against women, gender discrimination, violation of provisions of the Constitution relating to rights of women, all aspects of employment of women and measures for elimination of discrimination and deprivation of women, review Constitutional provisions and laws affecting women, and recommends amendments providing remedies, the NCW suffers in the areas of resource allocation, and devolution of powers. The state women's commissions too need to be radically reconstituted.

SEX ROLE STEREOTYPING AND PREJUDICE

The persistent failure of laws to check the discrimination against women - in cases of sati, domestic violence, sexual harassment at the workplace, rape, sex determination and sex selective abortions and the criminalizing of sexual diversity to name a few - have to do in large measure the power of sexual stereotypes in conditioning the minds of functionaries in the criminal justice system and the medical profession. Doctors, police personnel, lawyers and judges believe in the subordination of women and the need to circumscribe their movements.

The absence of clear censor guidelines on sexual stereotypes results in the unhindered portrayal of the glorification of women's subordination. The absence of any regulations in television programmes results in a worse portrayal of women in serials. Studies have shown that women viewers oppose demeaning stereotypes in serials and commercials.

The resilience of textbooks to campaigns by women's groups on breaking stereotypes points to the fact that people formulating the syllabus themselves subscribe to these views.

TRAFFICKING AND PROSTITUTION

Trafficking in women and children for commercial sexual exploitation and other abusive purposes is rampant in India and its toll on human suffering is evident in urban and rural pockets throughout the country. The incidence of intra country trafficking is also very high. It is a difficult task to estimate the exact number of

women and children trafficked to and from India, and within India. A study in the six metropolitan cities of India, suggests that 94% of trafficked women in India are from rural India and from the lower socio-economic strata. The study identifies Andhra Pradesh, Karnataka, Tamil Nadu and West Bengal as the highest supply states with 24%, 22%, 17% and 14% respectively.

All States should have a **specific monitoring mechanism** - a task force/core committee to look into the issue of trafficking and NGOs should necessarily be a part of this Committee. It should be made mandatory for the Panchayats - elected Local Self government to maintain a record of the people migrating from their respective villages for different reasons - marriage, higher education, employment etc. By involving different personnel from the administration and governance structures as well as from the NGOs and by creating awareness amongst the community, a networking system should be put in place to monitor the movement in women and children. Investigation of missing children needs to be done in the source areas by the Panchayat, which is the nearest formal body, which can identify trafficking. Integrated Child Development Services personnnel (Anganwadi workers) should share with members of panchayat the responsibility of identifying and lodging complaints on missing girls with the police. The procedural aspects of these actions need to be put in place urgently. A databank has to be created at the national and the state levels giving details about missing persons and trafficked persons.

POLITICAL AND PUBLIC LIFE

There is concrete data to prove that women cannot enter mainstream politics in significant numbers without affirmative action. This has more to do with discrimination against women than with women's inhibitions. The solution lies in a multi tiered reservation system, where political parties mandatorily field women candidates for one third of the seats they contest in each state and one third of seats in legislatures and both houses of parliament are reserved for women. This reservation must be a vertical reservation that is binding on the open and reserved constituencies.

Women in politics especially at the state and district levels find corruption, criminalization and communalization of politics impediments to their effective participation. This atmosphere also engenders violence against women contestants as a way of obstructing their entry into politics.

EDUCATION

Over the past few years the education sector has a number of new initiatives being introduced. While being appreciative of the increasing attention being paid to education there are several areas of concern that require addressing. We are concerned for instance, that the resource allocation for education continues to be below the 6% commitment and that there is a marked imbalance between the distribution of resources between different sectors which militates against the right to literacy and higher education for women. Resources for education are being raised from the public through a 2 % education cess; however, there is no information on how these resources are being utilised. Moreover, a globalised environment and an increasing government focus on encouraging private sector involvement in education, has led to the State gradually withdrawing from the education sector. The Government, for example, instead of hiring regular teachers now hires 'para-teachers' in large numbers who are less qualified and trained and hired on a temporary basis. This naturally has an impact on the quality of education of government schools and programmes, but additionally many of the para-teachers are women with no job security. The rapid privatisation taking place in all sectors of education may increase the number of educational facilities but it is negatively impacting women and girls, the poor and socially disadvantaged. Studies show that it is girls and children from poor and marginalised communities that now predominantly access government schools, while boys and children from more privileged backgrounds are increasingly attending private schools, where it is believed that the quality of education is far better. The cost of privatised higher education is prohibitive. The several alternative non-formal education programmes that have been initiated through the Sarv Shiksha Abhiyan (Education for



All) to provide access to those outside the ambit of formal education has also contributed to setting up of a 'double-track system' (alternative education for the disadvantaged and regular formal education for the privileged) within education. While many of these programmes are innovative and aim at mainstreaming there is as yet no data on how many remain in school after enrolling. NFE programmes cannot be a long-term alternative to a formal education system of good quality and based on equity principles.

EMPLOYMENT

In view of the critical role of women in agriculture and allied sectors, as producers, concentrated efforts must be made to ensure that benefits of training, extension and various programmes will reach them in proportion to their numbers. The programmes for training women in soil conservation, social forestry, dairy development and other occupations allied to agriculture like horticulture, livestock, including small animal husbandry, poultry, fisheries etc., need to be expanded to benefit women workers in the agricultural sector.

The important role played by women in electronics, information technology, textiles, food processing and agro industry and has been crucial to the development of these sectors. Yet they lack any support in terms of labour legislation, social security and other support services to participate in the industrial sector.

In order to substantially improve the economic status of poor women working in the informal sector of the economy, there is a need to devise concrete strategies which can help to enhance the ownership of and control over productive assets of these women.

Women in the unorganized and agriculture sector are being impoverished by economic and labour policies and need equitable wages and protection to their jobs and livelihoods. The speedy enactment of the Unorganized Workers Bill 2003 will protect labour/employment rights of women in the unorganized sector.

HEALTH

The need of the hour is a 100 percent availability of critical infrastructure, staff, equipment and supply inputs at all levels of public health facilities, especially in remote areas and provision of health care access to poor and marginalised communities. What is also necessary is an increase in allocation of resources for health and improved access to essential and emergency medical services.

It is obvious that the toxic gas released in December 1984 has had long term hormonal effects in women. Existing data must be reviewed, new research must be initiated, and health care for women restructured and made effective and available. The problems faced by gas and contamination affected women in Bhopal must be confronted not just with mainstream medicine but also alternative medical solutions. Furthermore, well-funded and carefully aimed public education programmes must be designed and implemented in Bhopal's gas and contamination affected neighborhoods.

The central government must set up a National Commission on Bhopal with the necessary authority and funds to thoroughly research health issues specific to gas and contamination affected women, provide appropriate treatment, and provide for public education about women's health issues in Bhopal's gas and contamination affected communities. The commission must have active participation of non-government doctors, scientists, and representatives of survivor's organizations.

The Government is responsible for enforcing the right to food. All measures necessary to reduce rural indebtedness, and eliminate hunger, malnutrition and starvation in the country need to be put in place with urgency given the crises people are coping with in rural areas. Particularly worrying in the spate of suicides by farmers in Andhra Pradesh and Maharashtra.

The Government must authorize credible institutions at the state level to ensure accurate reporting

of maternal mortality for each state and district.

RURAL WOMEN

Privatisation in agriculture and health especially have increased the vulnerability of rural women. Spiralling costs of agricultural resources and the collapse of the public health system are major issues that confront them today.

Women's engagement in agriculture needs to be recognized adequately through the creation of real access to land and resources. In situations where displacement has already occurred, a consultative process must be put in place to ensure that women's voices with respect to rehabilitation are heard and taken into account.

The state must take responsibility for the spate of farmers' suicides and provide immediate relief to families that will ensure their survival in the long term, especially by pulling them out of the debt trap. Credit must be provided to women farmers for building assets. Food Security must be assured and the working of the Public Distribution System monitored constantly and reassessed. In terms of land distribution, two acres of land must be distributed to every landless adult woman belonging to poor, marginalised communities in rural areas.

EQUALITY BEFORE LAW, MARRIAGE AND FAMILY LIFE

First among unequal laws, is the system of personal laws. Provisions in the personal laws of the different communities permit differential and unequal treatment of women. Personal laws continue to be discriminatory in their legislative content. It was as late as 2003 when Christian women realised the right of divorce equal to men through an amendment to the Indian Divorce Act. However, change is few and far between. Women continue to be discriminated against through personal laws. Muslim personal law allows a man to practice polygamy and marry four times. A woman can, however, marry only once. The practice of triple talaq allows a man to unilaterally and unreasonably divorce his wife, without a semblance of fairness. Under Parsi and Hindu law, The range of grounds available to a woman for divorce or judicial separation vary greatly. Chastity of the woman remains a precondition for the provision of maintenance to the woman.

The provision for the restitution of conjugal rights can be very heavily loaded against the woman. A woman, who wishes to stay apart from her husband for personal reasons, can be ordered by court to provide companionship to her spouse. This situation can be particularly dangerous and demeaning when she is a victim of domestic violence.

While the Gita Hariharan judgement was instrumental in recognizing the woman' right to guardianship under Hindu law, the law has not adequately recognized the woman's role as a guardian. Other issues that are important for women, but are so often neglected, include the right to residence, the right to property, mahr and stridhan, and custody of children.

WOMEN IN GUJARAT

Given the rise of religious fundamentalism and blatant attacks on minorities, especially minority women, it is necessary to establish special monitoring cells for religious minorities with judicial powers and separate from the executive. This is in view of the fact that in states like Gujarat, the government has been complicit in the derogation of the rights of entire communities. In Gujarat, the CEDAW committee must bring pressure on the Indian Government to push for the fair trial of the accused.

The Muslims of Gujarat, despite being brutalized and destroyed physically, psychologically and materially are living like refugees and Internally Displaced Persons in most of the cities and districts that they belonged to, from where they fled to the camps in 2002. Over one and half lakh Muslim men, women, children and elderly lived as refugees in camps for 10 months across the state. The Government of Gujarat gave official



recognition to the camps only for four months, forcing the camps to be closed even when the tensions and insecurity prevailed among the internally displaced families belonging to the Muslim Community.

After four years of violence, it is estimated that even presently 35,000 persons across the state are living displaced lives, coping on their own. This is besides 6,000 houses provided to the affected families as part of rehabilitative measures by various religious Organizations with the state government completely abdicating its role in rehabilitation and resettlement of the Internally Displaced Muslim families. The families that have been relocated and/or rehabilitated are forced to live in the outskirts of the main cities and villages or continue living in the same area amidst threats and insecurity.

TSUNAMI AND ITS IMPACT ON WOMEN

Women's livelihoods concerns have not been addressed in the Tsunami relief and rehabilitation process. Tsunami Marriages are on the increase. Young adolescent girls are married off to the widowers though they are mentally and physically not prepared for the marriage. This in turn deprives them of the opportunities for education and empowerment that come with it. Why do women have to undergo such treatment? Why are women not allowed to realize their potentials? Why should parents give way to the community pressures? These are some of the thought provoking questions asked by a young woman from Karaikkal, underscoring the fact that gender based roles and stereotyping have severely undermined women's interests in the wake of disaster.

WOMEN IN ARMED CONFLICT: NORTH EAST INDIA

The repeal the Armed Forces Special Powers Act has been long overdue. If the government's position is that there is no armed conflict in India as defined under International Humanitarian Law, government urgently needs to repeal the draconian Armed Forces Special Powers Act. This Act prevents the investigation and prosecution of security forces for act of violence against women in conflict areas, as suggested by the CEDAW Committee and Human Rights Committee. The CEDAW Committee in its last review of the India report raised this issue as cause of concern, but there has been no action on the part of the Indian government to take this issue on board and repeal the Act. This is cause for serious concern. The northeastern region needs specific focus in all aspects of civil and political life. Special attention needs to be paid to the impact of armed conflict on women.

DALIT WOMEN

The situation of Dalit women in India is unique to the category. Age-old discrimination and prejudices operate in multi-layered ways across class, regional and geographic boundaries and conspire to keep Dalit women in a position of always being at the mercy of political, social and economic forces, despite Constitutional guarantees of equality, and decades of targetted interventions by government.

Several legislations for their welfare including those banning Manual Scavenging, Prevention of Atrocities against SC/STs, the Abolition of the Devadasi system, and reservations in Government jobs have shown little progress in implementation. Allocation of funds for alternative training and employment of manual scavengers remains largely unutilized, and manual scavenging (undertaking sanitation work with minimal protective equipment, almost with bare hands, mainly undertaken by women) continues unabated in the government-run Railways and municipalities. Convictions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989) continue to be around 1% for ALL crimes committed against SC/STs, including both men and women. Hence the rate of conviction for crimes against Dalit women falls below this rate.

Girl children face a real danger of abduction and rape on the way to school - almost always located some distance from the Dalit colony - which is the reason for the high level of drop-out rate of Dalit girls at middle-school, and the wide prevalence of under-age marriages of Dalit girls. Dalit children face both blatant and subtle forms of caste discrimination in the school system, especially from teachers. Even the

mid-day meal scheme providing a hot lunch to school children is the site of caste discrimination, with dominant caste parents refusing to let their children eat food cooked by Dalit women, or in the company of Dalit children.

The lack of assets and indebtedness is another major problem Dalit women face. This leads either to large scale migration to urban areas or to the debt trap in rural areas.

SITUATION OF TRIBAL WOMEN IN INDIA

At the end of the United Nations Decade for the World's Indigenous Peoples (1995-2004), the approximately 67 million adivasi people who live in the country, suffer violence in its various *avatars*- dispossession through an alienation and exclusion from forests and land, neocolonization, displacement, assimilation and state repression - has assumed genocidal proportions over the past five decades. A recent study has delineated five aspects of gender-based violence against Adivasi women in India - physical assault, sexual exploitation, sexual harassment, forced sterilization and abuse of the girl child. Of the eight categories of perpetrators of physical and sexual assault in Tamil Nadu, it was found that forest officials ranked second. In cases where perpetrators were non-tribals, estate managers, private security on estates, etc., the fact of police complicity through non-registration of cases was very high. Over 300 women in over a quarter of the villages spread across seven districts in TN were forcibly sterilized. Apart from the systematic deployment of violence, adivasi women in "disturbed" areas are the target of state repression and often taken into custody in the absence of the husband and or for interrogation to police stations in brazen violation of procedural prescriptions. Discrimination in accessing employment, unequal pay for equal work not just between men and women but between non tribal and adivasi women, the absence of anything like maternity benefits, and dismal figures for female education in adivasi areas are practices of violence that are rooted in the structural discrimination against adivasi people, women in this instance as well being in far more vulnerable positions.

VIOLENCE AGAINST WOMEN ON THE BASIS OF SEXUAL ORIENTATION

State as well as civil society initiatives work within a framework based on the false assumption that heterosexuality is the only legitimate reality. The consequent violations of rights are wide ranging. As General Recommendation 19, number 23 notes, "family violence is one of the most insidious forms of violence against women." Some of the more overt manifestations of sexual orientation based violence against women within the home include verbal and physical abuse, in-house imprisonment and forced marriage. The denial of the choice with respect to whether or not, when and whom to marry clearly violates Article 16, parts a and b of the CEDAW convention. The lack of choice in relation to marriage has led many young women to take their own lives. In the case of same sex desiring women who have no choice but to marry, the sexual relationship with their husbands is often nothing short of marital rape. Families send women to mental health professionals to be 'cured' of their homosexuality. The treatment can include strong medication and aversion therapy, which involves the administering of electric shocks. The police actively colludes with families to use Section 377 of the Indian Penal Code (which criminalizes all forms of "carnal intercourse against the order of nature") to threaten women if they do not give up their same-sex relationships. While a petition to read down Section 377 so that it does not cover consensual adult same-sex relations is being reviewed in the Delhi High Court, the Government continuously evokes the idea of the preservation of public morality as an excuse for the continuation of this law. The very existence of section 377 militates against the State's obligation to respect, protect and fulfill all women's human rights with regard to human dignity, freedom of association, assembly and movement, privacy, non-discrimination, equality and the prohibition against torture.

WOMEN IN URBAN SETTLEMENTS

Poor women in slums experience enormous and unacceptable levels of violence in their daily lives in the family, community, work place and public place. The violence such as wife beating, battering, desertion,



police harassment, dowry harassment, dowry deaths, suicides. The phenomenon of addiction to arrack [locally brewed liquor] is taking serious toll of families in urban slums. Women's wages are spent by their men on consuming alcohol causing tremendous stress and making women vulnerable to domestic violence. The government gives licenses for cheap liquor shops in and around slums because the industry generates enormous incomes through consumption by the poor.

The beginning of poverty eradication is the all round empowerment of the urban poor, especially poor women at community level. The physical, financial and cultural supports of the central and state governments, local administration bodies, other developed agencies earmarked for poverty eradication should be made available to poor women at community level for their empowerment and self help. The economic empowerment of poor women is a precondition of effective poverty eradication.

GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN

Sexual Assault: Marital Rape Continues To Be Lawful

Violence, sexual violence in particular, is pervasive, normal and is a critical instrument in the subjugation of women and their confinement to private spaces. Even after prolonged discussions with the Law Commission of India, marital rape continues to be lawful in the country with the new Criminal Law Amendment Bill refusing to remove the exception of marital rape from the definition of rape in the IPC. The exception to Section 375 IPC which says "intercourse of a man with his wife, the wife not being less than 16 years does not come under the definition of rape" should be removed forthwith, especially since domestic violence has been recognised as a crime as also dowry death. The persistence of this exception is an anomaly in the government's stated recognition of violence women face in their marital homes.

The Killing Fields of Witch-Hunting

Witch-hunting, one of the least talked-about acts of violence in India also manifests itself in some form or the other in different parts of India with concentration in the areas (states/UTs) of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharastra, Orissa, Rajasthan and West Bengal. It has been found that it is not superstition that is at the root of many of these accusations of witchcraft but socio-economic factors- land grabbing, used against women who spurn the sexual advances of powerful men in the community, etc. Further, low levels of education and poor medical facilities have been singled out as leading to a belief in witchcraft in parts of Assam, where many innocent people have been victims of witch-hunts. In the interiors of states like Bihar and West Bengal, 'witches' or *'dains'* and their children are still hunted and killed. Each year, an estimated 200 women are killed as witches in rural India. According to the National Crime Record Bureau during the year 2000-2001 there were 253 cases of Witch-hunting (126 cases in 2000 and 127 in the year 2001).

Sex Selective Abortions, Gender Cleansing or Crime Against Humanity?

There are clear correlations between the proliferation of sex determination tests, increase in sex selective abortions and decline in sex ratio with urban areas showing sharper drop in the sex ratio than rural areas. And not only do the numbers increase each year, but techniques for eliminating the birth of girl children proliferate. The most recent method of exterminating girls that is on offer is sex selective conception. Since the implementation of the PNDT Act, there have been 30 lakh female children missing, 90 lakh doctors accused, and one conviction. The PNDT Act needs to be implemented more stringently and cases booked against medical practitioners.

CONCLUSION

Each of the chapters in this Alternative Report point to the widespread practices of discrimination and social exclusion of women and provide evidence in the form of statistics and media reports on the prevalence

of the problem. The contributory factors to this wide-ranging discrimination are several. While immediate factors have to do with the life crises that poor and disadvantaged sections face generally, these cannot be de-linked from the historical and systemic factors that easily accommodate structural violence against women and guarantee impunity despite the existence of legal safeguards.

The reason for the persistence of discrimination, we believe is because there has been no fundamental transformation in the body politic and the composition of institutions of governance - the legislature and the judiciary especially. These are the two institutions, which have ironically been most resistant to the implementation of the equality code of the Constitution, especially with respect to gender equality and caste equality.



PART I : CEDAW ARTICLES

INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER I

CHAPTER I

INTRODUCTION : CRITICAL ENGAGEMENTS ON CEDAW IN INDIA



INTRODUCTION : CRITICAL ENGAGEMENTS ON CEDAW IN INDIA

In India, the debates around discrimination against women go back to the pre Beijing preparations, which witnessed a vibrant sharing of information, understanding and analyses in the context of CEDAW facilitated by the Coordination Unit for Beijing. This created the momentum and sharpened the articulation of women's concerns on areas of discrimination in public and private spheres. This concerted effort led to the drafting of the *NGO Report on CEDAW* (1995), which strengthened the advocacy and lobbying of Indian women's groups who participated at the Fourth UN World Conference on Women at Beijing (September 1995).

While this exercise drew in NGOs, activists, researchers and lawyers from across the country to contribute to the report, it also facilitated the flow of information about the Women's Convention to a large constituency. It thus became part of a larger process of creating and disseminating popular materials on human rights and women. More importantly it generated debates on the adaptability of the Convention to meet the diverse needs of different groups of women in the India.

The National Alliance of Women was in the forefront of the post Beijing phase when several groups and organisations systematically trained women activists and lawyers on the Women's Convention.

AN OUTLINE OF CRITICAL CONCERNS

Despite the year 2001 being declared the Year for Empowerment of Women, the status of women in India causes concern, with socio-economic indicators showing a disturbing trend - a falling juvenile sex ratio, rising levels of poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood and increased violence in all spheres. Globalization, fundamentalism and rising caste and religious intolerance, have given an impetus to increasing and varied forms of violence against women.

We are concerned that despite the commitment made by the Government to the CEDAW Committee to empower the National Commission for Women (NCW), which is mandated to look into all cases of atrocities against women, gender discrimination, violation of provisions of the Constitution relating to rights of women, all aspects of employment of women and measures for elimination of discrimination and deprivation of women, review Constitutional provisions and laws affecting women, and recommend amendments providing remedies, the NCW suffers in the areas of resource allocation, and devolution of powers. We insist that NCW be given powers on par with the National Human Rights Commission. Committee should be constituted on the basis of competence and commitment rather than political affiliations.

As the government's position is that there is no armed conflict in India as defined under International Humanitarian Law, we urge the government to repeal the draconian Armed Forces Special Powers Act which prevents the investigation and prosecution of security forces for act of violence against women in conflict areas, as suggested by the CEDAW Committee and Human Rights Committee. The government must take affirmative measures to pass the proposed bill to reserve not less than 33.3 percent seats in State Legislatures and Parliament for women.

We are concerned about the resource allocation to education in the Tenth Five-year Plan (2002-2007), and within this the marked imbalance between elementary education and higher education, which mitigates against the right to education of girls and women. This also comes in the way of the government fulfilling its commitments to CEDAW and the Beijing Platform for Action.

Women in the unorganized and agriculture sector are being impoverished by the economic and labour policies and need protection to their jobs, livelihoods and equitable wages. Government to ensure application of labour legislation in the unorganized sector, the speedy passing of the Unorganized Workers Bill 2003 and protect labour/employment rights of women in the unorganized sector.

India has ratified the CEDAW Convention with two Declaratory statements providing that in so far as Article and 16 (1) are concerned, it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. General Recommendation No. 19 of the CEDAW Committee clearly points to the fact that rational and cultural practices/attitudes perpetuate widespread practices involving violence or coercion and that such prejudices and practices may justify gender-based violence. The CEDAW committee recognizes the importance of culture and tradition in shaping the thinking of men and women and the significant part they play in restricting the exercise of basic rights by women. The Committee noted with alarm the number of State parties which have entered reservations to the whole or part of Article 16 and exhorts the state parties to gradually progress to a stage where by its resolute discouragement of the nations of inequality of women in the home each country will withdraw its reservations, in particular to Articles 9-15 and 16. Article 28 of the CEDAW Convention prohibits any reservation incompatible with the object and purpose of the convention. Further the Committee considers Articles 2 and 16 as the core provisions of the Convention and any reservation with respect to the Core Commitments under the CEDAW need to be withdrawn.

Article 14 and 15 of the Constitution of India guarantees equality before the law and non-discrimination on the basis of sex. All laws that are discriminatory against women need to be repealed to achieve the promise of equality guaranteed by the Constitution of the country. The declaration of GOI that discriminatory laws shall not be amended without the consent of community violates the spirit of the Constitution.

Article 2 (e) to the CEDAW Convention exhorts the State Parties to undertake all appropriate measures to eliminate discrimination against women by any person, organization and enterprise. *General Recommendation No.19* of the CEDAW Committee clearly provides that the definition of discrimination given in Article 1 of the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. India has failed to honor Article 2 (e) and General Recommendation No. 19 in letter and spirit. Recent mass violence in Gujarat against women by non-State actors such as political organizations and fundamentalist groups is a gross violation of CEDAW, General Recommendation No.19 and the Constitution of India. State inaction in this regard amount to its complicity in the violence.

THE NGO ALTERNATIVE CEDAW REPORT, 2000: LOBBYING STRATEGIES

NAWO has since 2000 maintained a close follow up with the Department of Women and Child, Ministry of Human Resources Development, Government of India, with a view to monitoring the follow up actions of the Government of India on CEDAW.

The impact of the NGO Alternative CEDAW Report was significant, as it put pressure on the government and the National Commission for Women to arrange for several dialogues on the CEDAW submissions by the Government of India at the UN. This has been a positive change in the government's attitude in contrast to its earlier practice of the veil of secrecy prior to 2000.

The NGO Alternative CEDAW Report generated awareness and education on the Women's Convention and its scope in effectively addressing discrimination against women. NAWO submissions set the tone of shadow reporting on the ground realties of the status of women in India. The NGO submission generated sufficient pressure on the government to look into the institutional mechanisms to monitor CEDAW commitments.

We, at NAWO have been greatly encouraged by the positive impact of the NGO CEDAW submission and have resolved to take forward awareness building and education on CEDAW to a larger constituency in the country. In these efforts IWRAW- Asia Pacific (Malaysia) has been our lead partner, others such as Asia Foundation, Bangladesh and UNIFEM-SARO have also supported us with resource facilitation. These partnerships and facilitation, have been critical to NAWO.



In brief, we highlight these and also share our future plans in popularizing CEDAW in our country.

After the NGO Alternative Report submission in Jan 2000 by NAWO, we have been in close consultation with the Department of Women and Child Development, Government of India for monitoring the implementation of CEDAW. The consultation has been cordial and yielded positive results. NAWO is now officially recognized as the lead network that has been working nationwide on CEDAW at the NGO level. A major achievement was that the government called for a national level CEDAW Consultation on 27th January 2003. This was the result of several sittings with the Secretary, and Joint Secretary of the Department of Women and Child, Ministry of Human Resources Development.

This National Consultation was in preparation for India's Second Implementation Report. Government officials were called to interact with NGOs. The list had 40 NGO invitees, 12 secretaries of different state departments of women, 7 chairpersons/secretaries of state commissions for women and 34 secretaries of different central government departments whose ministries /departments are recipients of the budgetary allocation of the *Women's Component Plan* (WCP). The list also included the Secretary General of the National Human Rights Commission. The Department of Statistics and Programme Implementation presented the indicators developed by them for NGO feedback for *Women and Men in India - 2002*.

The NGO- National Consultation on CEDAW Monitoring and Implementation of CEDAW Committee's Concluding Comments/Observations on India's Initial Report, was held two days prior to GOI consultation of 27th February 2003. Called by NAWO on 25th & 26th February 2003, the consultation had 67 participants from all over India. The participants belonged to groups that participated in the drafting of the first Alternative CEDAW Report and others interested in contributing to the second and third NGO Alternative Report. **At this National Consultation of NGOs, NAWO received mandate to coordinate the Second and Third NGO Alternative Report on CEDAW.**

This achievement was very gratifying in comparison with the phase of the initial GOI report on CEDAW between 1998-2000, where little was achieved in terms of government co operation. NAWO's mandate of 'policy intervention' to engender national level planning is strengthened by this.

The NAWO national secretariat designs critical interventions. A CEDAW resource base has been set up at New Delhi to facilitate wider dissemination on CEDAW.

RECOMMENDATIONS TO THE GOVERNMENT

- Implementation of laws and institutional mechanisms with special reference to the National Commission on Women and the NHRC. Transparency and clarity in the appointments and mandate of the State Women's Commissions. Nonpartisan approaches and strategies to ensure participation of NGO women representatives on the committees, which decide resource allocation extremely important. Fast track courts to bring justice to women. With reference to paras 29-32 of the concluding comments, it is important to point out that legislative reform has been a continuous process and to specify actually completed reforms. Reform of the justice delivery/law enforcement system is most critical and the need is to promote new thinking and strategies. Inadequate implementation of the law as well as gaps in the legal framework are a serious impediment to the realization of women's human rights. The GOI to amend existing laws to bring them in conformity with the Convention:
- Dowry Laws.
- Customary practices viz. sati, *devadasi system etc.*
- Caste based discrimination.
- Laws on trafficking and sexual exploitation.
- Bonded labour.
- Inheritance laws.
- Access of rural women to land and credit.

- Mandatory representation for women at all levels in politics, judiciary and employment.
- Legal awareness/training on CEDAW at all levels of political, legal, and administrative machinery inviting the participation of experienced persons from NAWO. The Karnataka experience of training the MLAs in CEDAW provisions showed that legislators, once sensitized, were able to take up the issues with the government.
- Demand that the Government remove its reservations to CEDAW.
- Repeal the Armed Forces Special Powers Act, especially the provision that human rights groups cannot investigate human rights violations in areas where the Act applied.
- Compulsory Registration of Marriages to decrease vulnerability to trafficking and to check incidence of child marriage. GOI should withdraw the reservation to compulsory registration of marriage, given the availability of institutional and human resources necessary for putting in place a system in this regard.
- In case of trafficking, there should be special safety measures for those working against it: the victim's wishes about where she wants to go or what she wants to do should be taken into account. There should be clear policy on rescue and rehabilitation at the state level, more trained workers, and shelter homes need to be set up by the government.
- Derogatory portrayal of women in film and electronic media calls for better regulation of standards by the government but also for popularizing alternative depictions that show women in more positive light.
- The northeastern region needs specific focus in all aspects of civil and political life. Special attention needs to be paid to the impact of armed conflict on women.
- Complicated procedures of nomination for candidature in local governance bodies are difficult to follow for village women and need to be simplified.
- The National Health Policy has no substantive provisions for women. Furthermore, commercialization of health services puts medical facilities out of reach for poor women.
- Establishment of special monitoring cells for religious minorities, similar to those already existing for Scheduled Castes/Scheduled Tribes.
- Textbooks at all levels must be revised to include greater sensitivity to women's concerns.
- Demand that the Optional Protocol under CEDAW be ratified.
- Demand that the Protocol on Transnational Crime be ratified.
- Demand a CEDAW monitoring cell with 50 percent NGO participation with regional representation. Women with proven record of work on issues outlined in CEDAW actually and actively working on CEDAW issues may be identified through a transparent process. Women should have the right of recall in case these representatives did not represent their concerns adequately.
- India's strengths in quantitative analysis and imaginative use of indicators should be used to help prioritize specific groups who require immediate attention.

NGO STRATEGIES

- Work out a plan for putting together a shadow report on CEDAW with emphasis on violence, health, education and employment issues. Groups to come forward to work on address specific articles from regions and states.
- Disseminate the outcome of the GOI Consultation as widely as possible.



NAWO'S AGENDA

1) To do systematic follow up and active advocacy work with GOI for removal of reservation and simultaneously nationwide campaigns on educating civil society groups on optional protocol and reservations on CEDAW.

2) To prepare simplified booklets on CEDAW, in at least six regional languages for state level groups with the purpose of regional trainings, for the next 3 years.

3) To develop a comprehensive (illustrated) manual in English for in house NAWO trainers of CEDAW.

4) To create posters in all the 13 Indian official languages for advocacy on "Registration of all marriages" under the national campaign of NAWO on the same issue.

5) To hold NAWO workshops on CEDAW with at least 6 law schools/ universities in the next 3 years to sensitise law students to gender discrimination.

6) To hold seminars and workshops throughout India in at least 30 women's colleges to orient young women on knowledge of CEDAW its application.

7) To take forward with different women's groups both within the NAWO network and outside it the national campaign around Article 5 and 16(2).

8) To call a small consultative group of experts and NAWO and GOI on Optional Protocol and Reservation.

9) To explore, the possibility of calling for discussions and consultations with different community leaders of minority communities influencing the reservations.



INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 2

CHAPTER 2

ARTICLES 1-4: EQUALITY, NON DISCRIMINATION, HUMAN RIGHTS & FUNDAMENTAL FREEDOMS, SPECIAL MEASURES



EQUALITY, NON DISCRIMINATION, HUMAN RIGHTS & FUNDAMENTAL FREEDOMS, SPECIAL MEASURES

2.1. THE PREVALENCE OF THE PROBLEM

The Indian Constitution grants fundamental freedoms to all its citizens, and recognizes the right to non-discrimination and equality for women as justiciable. However there are critical ways in which these fundamental rights, in their enforcement, fail to provide protections to women, especially to dalit, adivasi and minority women. While the Government of India report makes a mention of the protection offered by constitutional guarantees contained in fundamental rights, it does not mention that **such protection does not extend to situations of discrimination by private parties**. Fundamental rights may not be availed against private parties and non-State actors, and this remains a fundamental limitation. The second part of the problem is that although protections are provided against state actors, in practice, since the women whose rights are derogated, belong in large part to the most vulnerable and marginalised sections of citizens, **justiciable rights are rarely enforced on the ground**.

A third limitation is the non-recognition of the intersectional nature of discrimination, compounded by the non-inclusion of crucial measures that sharpen discrimination against women. Courts do not address **indirect discrimination** as it has often been held that mere classification cannot be interpreted as discrimination.

2.1. 1. Discrimination in Employment

A. Military Nursing Service

In 1994 it was reported that there were 200 women in the armed forces. Barring a couple in combat positions, all the rest were in the Military Nursing Service.[1] The fact that the Service is **entirely female** is masked by the use of the word "person" and "officer." The Military Nursing Service had evolved rules that in the interests of the efficiency of the service, after marriage a person could remain in service only if she justified her continuance *by showing extra efficiency in the years preceding her marriage*. In 1988, Indira Kumari Kartiayoni a Lt. Nursing Officer in the Military Nursing Service got married after obtaining requisite permission. However subsequent to the marriage her service was discontinued, the justification being her "comparatively poor performance." In the ordinary course however, it was admitted that this performance level would not have interfered with her continuation in service or her promotion to the next grade. What she had failed to demonstrate was "extra efficiency" for two years *prior* to marriage. The Supreme Court ruled that the appellant be given the opportunity to prove her efficiency in the two years subsequent to marriage and then be discontinued if found inefficient.[2] For the women in the corps, however, it is not marriage that is the issue but sexual harassment and too little meaningful, engaging work.[3] There is no doubt that the court was aware that it was dealing with a "woman's problem". But most important of all, an unjust rule is upheld and also the setting of different standards for women that work to their disadvantage as a class. The decision itself gives immediate temporary reprieve without disrupting the arbitrariness of the rule in any manner whatsoever.

- What is the measure of that extra efficiency?
- How can performance be adequate if marriage is not contemplated, inadequate if marriage is contemplated?
- Is it not arbitrary to assume that all women will perform badly at work after marriage?

B. Indian Air Force

In January 2005, Flying Officer Anjali Gupta, the only woman officer in the command at the Aircraft and Systems Testing Establishment ASTE, Bangalore, charged her senior officers of harassing her sexually and mentally and threatened to expose corruption, that she alleged they engaged in. The IAF protocol demands that all complaints and grievances be routed through the commanding officer. Anjali's grievance was against the ASTE commanding officer. She first filed a case against them at a local police station in February. And when the police failed to act, she went to the Karnataka High Court and asked for a CBI inquiry. Anjali has also approached the Karnataka State Commission for Women for support.

In a twist, in December 2005, Anjali Gupta was cashiered from service after being the only woman to be court martialled on charges of embezzlement [of Rs 1087, which is roughly equal to 25 USD], indiscipline and insubordination. The Chief of Air Staff later reduced this to dismissal from service. Criticising lack of gender specific guidelines regarding the conditions of women employment in the Air Force, the All India Democratic Women's Association (AIDWA), in a letter signed by its national leaders reminded the Air Chief Marshal of the Supreme Court 1997 Visakha judgment which issued very specific guidelines on how complaints of sexual harassment at the work place are to be dealt with. Anjali Gupta was put under 'close arrest" for over a week in February so that the Air Force could collect evidence against her. Again she has been put under "close arrest" since April 12th. The letter states: "It is incomprehensible why this young woman should be kept in solitary confinement on such minor charges. The plea taken by the authorities that it is because she may commit suicide is laughable... Every conversation she has on the telephone is being monitored. Every action of the Air Force in this case is further causing trauma to this young woman." The letter further stated, "Her 'close arrest' and the manner in which the Court Martial proceedings and the inquiry into the sexual harassment are being carried out are inhuman, anti-women and denial of her basic Constitutional and legal rights and are contrary to the direction given by the Supreme Court in the Vishaka judgement. The fact that these rights are being denied to Anjali Gupta during peacetime is a matter, which requires serious consideration. Thus, the rules of natural justice are also not being followed."

The problem of sexual harassment of women and gender-based discrimination in the Armed Forces remains unaddressed, and closed to public scrutiny.

2.1. 2. Caste Discrimination and Women

Practices of untouchability have compounded the vulnerability of dalit women that spreads from a devaluation of their labour to the systematic derogation of their bodily integrity. The **Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes** has recently noted "women belonging to these [Scheduled] Castes and [Scheduled] Tribes bore a double burden. They were exploited by caste and gender, and were vulnerable to and powerless against sexual exploitation."[4] Similarly, the National Commission for Scheduled Castes and Scheduled Tribes has stated that while the annual average of reported crimes against Dalit communities has stayed at 25,000 per year, there is a substantial increase in the 'heinous crimes of rape and murder' committed on the members of the scheduled castes.[5] The same Commission has also noted "it is of great concern and regret that in our society, its weakest and vulnerable segments continue to suffer from discrimination, exploitation and atrocities. **Despite provisions for removal of disabilities and discrimination against SCs [Scheduled Castes] and STs [Scheduled Tribes] provided in the Constitution of India, incidents of atrocities on members of SCs and STs continue to be reported from all parts of the country in differing numbers."**[6]

The *SC/ST Prevention of Atrocities Act* has fifteen parameters for the definition of the term atrocity. Two of these are specifically applicable to women, both dealing with sexual assault. While men belonging to the Scheduled Castes and Scheduled Tribes experience aggravated forms of assault along with the range of



discriminations in employment, all of these derogations happen with women *in addition* to the fact that they bear the brunt of aggravated sexual assault. The experience of sexual assault cannot be separated from the range of derogations that are systematically practiced with reference to members of the Scheduled Castes and Scheduled Tribes in the country. Dalit women 'face targeted violence from state actors and powerful members of dominant castes and community especially in the case of rape, mutilation and death; they face discrimination in the payment of unequal wages and gender violence at the workplace that includes fields [as agricultural labourers], on the streets [as manual scavengers and garbage pickers], in homes [as domestic workers], and through religious custom...'[7]

Dalit women are 'dalit among the dalits', because they are thrice alienated - on the basis of caste, class and gender. The oppression of Dalit women echoes issues of state violence, denial of land rights, social and legal discrimination, infringement of civil liberties, inferior status, dehumanizing living and working conditions, total impoverishment, malnutrition, poor health conditions, the adverse effect of various contraceptives and new family planning devices, social ostracism and untouchability.[8]

"Despite the law prohibiting **manual scavenging**, dry latrines still exist in many parts of the country. SC women, working as manual scavengers, are the worst sufferers. They are not provided protective gear and carry the night soil as head-loads, thus getting exposed to the risk of infectious diseases. Though the malaise is visible, the corrective measures are not."[9]

Manual Scavenging or conservancy work is a predominantly female occupation that is completely unprotected by any labour legislations violative of Articles 14 and 15 of the Indian Constitution. It is tied to practices of untouchability banned under Article 17 of the Constitution and it is a degrading form of labour that expresses social exclusion under ILO norms. Manual scavenging was itself constitutionally banned in 1993 by **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act.** The National Commission of Safai Karamcharis was constituted in 1994 and the National Safai Karamchari Finance and Development Corporation was formed in 1997, and the National Human Rights Commission took note of the problem in its Annual Report of 2000-2001. The conditions of scavengers and sweepers have been reviewed over the course of five decades by at least three committees set up by the government: the Barve Committee in 1949, the Malkani Committee in 1966 and the Salappa Committee in 1975. We have since 1993 the National Commission for Safai Karmacharis Act, and the work of the commission itself, yet the work, degrading as it is, persists. Yet, the Ministry of Social Justice and Empowerment, Government of India released statistics for 2002-2003, which show that there are 676000 people employed in manual scavenging [the unofficial estimate is 1300,000 people] over twenty one states and union territories, working at 9600000 dry latrines in the country. Over 98 percent of these people, predominantly women, belong to dalit communities. The National Commission for Safai Karamcharis noted in its report in 2000 that the major employers were the Military Engineering Services, Army, Public Sector Undertakings and Railways. There have been cases where dry latrines have been found in the premises of district courts and used by village panchayats as well. Delhi, Shimla, Mathura, Agra, Bhopal, Jaipur and Indore have the highest concentrations of dry toilets.[10]

Till 2003, Nandikotkur, in Kurnool District, AP, had nearly a thousand dry toilets, all serviced by the permanent employees of the village panchayat. The Panchayat collected Rs. 15 [0.33 USD] once in three months from house owners. There are presently eighteen permanent employees [eleven women, seven men] and twenty six temporary employees [12 women, 14 men]. All of them belonged to the Scheduled Castes. Efforts at demolition of dry latrines by the Safai Karamchari Andolan [the movement of persons engaged in manual scavenging] in 2003, were stopped by the Collector in response to a representation by the then MLA on behalf of the residents.

2.1. 3. Discrimination Against Religious Minorities

Muslim women of Gujarat were victims of a horrific one-sided carnage in 2002 when they were brutalized and destroyed physically, psychologically and materially. They are now living like refugees and Internally Displaced Persons in most of the cities and districts that they belonged to, from where they fled to the camps in 2002. Over one and half lakh Muslim men, women, children and elderly lived as refugees in camps for 10 months across the state. The Government of Gujarat gave official recognition to the camps only for four months, forcing the camps to be closed even when the tensions and insecurity prevailed among the internally displaced families belonging to the Muslim Community.

After four years, it is estimated that even **presently 35,000 persons across the state are living displaced** lives, coping on their own.

Within the state of Gujarat the Muslim Women are facing large scale violence, discrimination and denial for being belonging to a particular minority community rather than being a women within her own community. The issues of human security, personal threats, forced poverty, inaccessibility to education, health and livelihood options due to majority communalism and the partisan State being central to her life in today's context. These situations on other hand limit her capacities to struggle for reforms in favour of women within her own community and religion.

It is with this context that one has to look at the violations faced by Muslim Women within Gujarat in framework of CEDAW.

2.1. 4. The Right to Food and Housing

Closely related to the question of discrimination and social exclusion is the question of survival. **The right to food, work and survival** is one that is as crucial to women as to men, if not more. In the context of the widespread **starvation deaths** in the country and the case in the Supreme Court on the Right to Food, Rajasthan provides a telling case. Even in ordinary years, hunger and under nutrition are widespread in Rajasthan. According to the National Family Health Survey (1998-99), for instance, more than half of all children below 3 years are undernourished and about half of all adult women suffer from anemia. According to the Government of India figures, out of thirty-six crore people living below the poverty line, there are more than five crore people who have been victims of starvation. In sheer terms of magnitude then, the right against starvation, which is an intrinsic part of the Right to Life and Livelihood is a critical issue for women, an issue that is a product of the era of globalisation.

Sixty percent of India's forestlands lie in the 187 adivasi (tribal) districts, which in turn comprise 33 percent of the country's geographical area.[11] A significant proportion of forest communities are scheduled tribes, who have a special status in the Constitution. Recognising the importance of protecting their habitat from incursions, the 5th and 6th Schedules of the Constitution provide for a different dispensation in the administration of scheduled areas. Despite these constitutional protections, there has been a widespread negation of communal tenures and the consequent eviction of entire communities from forests, through the blanket application of conservation laws in adivasi areas.

The **Right to Housing** is a major concern in international law. The Committee on Economic, Social and Cultural Rights observed that "Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions".[12] The description of adivasis [63 percent of whom are either landless or own less than 1 ha of land], as encroachers on forest land and their eviction and displacement by the state violates their



fundamental right to life and livelihood, women are a major section of those affected.

2.1. 5. Discrimination on Grounds of Disabilities

Disability Rights have not entered the constitutional framework in any significant way. The current trend on disability within government as set out in paras 117 - 120 of the II and III Report of the Government of India still indicates a welfarist approach, not one based on entitlements. Discrimination based on disability in the government report comes within the meaning of Article 41, which speaks of "public assistance in cases of unemployment, old age, sickness or disablement" to be provided by the state "within limits of its economic capacity and development." There is at the present time a bar on persons with disabilities entering the judicial services, clearly in contravention of all international human rights norms. The following provision has been used to bar persons with disabilities from being appointed, the first affected candidate from Andhra Pradesh is a visually challenged woman advocate Chandra Supriya, who was barred in 2004.

Rule 12 of the AP Judicial Services Rules states that:

"Rule 12: General Qualifications: No person shall be eligible for appointment to the service unless -

(iii) He is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment."

2.1. 6. Discrimination on Grounds of Sexual Orientation

Sexual Orientation is an axis on which grave discrimination occurs that is also legally sanctioned. The queer community in India, on account of criminalisation by Section 377 of the IPC, are a socially disadvantaged group, who are unable to approach the court directly for fear of being identified and being subject to discrimination, harassment and violence by the police and society. The Supreme Court, in a number of decisions, has held that when a person, or a class of persons to whom legal injury is caused due to a violation of a fundamental right is unable to approach the court for legal redress, the matter can be brought before the court through a Public Interest Litigation (PIL). While on the one hand the government, through the National AIDS Control Organisation (NACO) and the various state AIDS Control Organisations encourages diverse sexual practices within a safe-sex, HIV/AIDS prevention framework, it still believes that Section 377 is necessary.[13]

Disability and **Sexual Orientation** are two such axes along which discrimination occurs, and where women's experience of discrimination remains unarticulated in the public domain. **In fact these are two major areas of discrimination that do not find mention in CEDAW either.** We would like to draw the attention of the Committee to Section 9 of the **South African Constitution,** which explicitly includes both these classes within the meaning of equality.

2.1. 7. HIV/AIDS and Discrimination Against Positive Women

The AIDS pandemic far from being purely a health concern, is inextricably linked to other fundamental human rights. Where there is a cultural and systemic discrimination against women, this increases their susceptibility to infections and increases their vulnerability to violence both in the family and community consequent on infection. According to the National AIDS Control Organisation (NACO), Ministry of Health and Family Welfare, Government of India, 3.5 million people are living with HIV/AIDS in India. In South Asia, women constitute upto 35 percent of persons living with HIV/AIDS. Statistics put out by the NACO show that although there is "no significant upsurge in new infections", there is a spread of HIV in India, with each year showing an increase in persons living with HIV/AIDS over the previous year.

Studies have shown that HIV epidemics in India are, in fact, very diverse. There were about 5.1 million HIV+ persons in India in 2003. Serious epidemics are underway in several states. In Tamil Nadu, HIV prevalence of 50 per cent has been found among sex workers, while in Andhra Pradesh, Karnataka, Maharashtra and Nagaland, HIV prevalence has crossed the 1 per cent mark among pregnant women. In Manipur, meanwhile, an epidemic driven by injecting drug use has been in full swing for more than a decade and has acquired a firm presence in the wider population. HIV prevalence measured at antenatal clinics in Manipur cities of Imphal and Churachand has risen from below 1 per cent to over 5 per cent, with many women testing positive appearing to be sexual partners of male drug injectors.[14]

There is a direct linkage between marital violence and women's ability to protect themselves from HIV/AIDS. Violence has been shown to increase women's risk to HIV/STDs through three main routes: increased sexual risk-taking in women with a history of sexual abuse in childhood or adolescence; forced sex with an infected partner; and women's inability to negotiate condom use.[15]

2.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India contains guarantees of Non-Discrimination expressed in terms of

(A) Guaranteeing equality.

(B) Guaranteeing life and liberty with dignity of which an important part is the proscription of practices that are derogatory to human dignity.

(C) Guaranteeing the Right to the Freedom of Religion and Protections to Religious Minorities.

2.2. 1. Equality

The Fundamental Right to **Equality,** contained in Article 14 of the Indian Constitution guarantees citizens '*equality before the law*' and '*equal protection of the laws*'.

The Constitution of India also makes particular mention of the principle of non-discrimination based on sex. Article 15(1) protects citizens from unequal treatment and injuncts the State from discriminating against any citizen on grounds of *only* sex, among other grounds. Article 16(2) of the Constitution of India prohibits discrimination on grounds of sex in matters of employment or office under the State.

The Constitution aims at eliminating historical disadvantage of women through the principle of substantive equality. Article 15(3) enjoins the State to take special measures, legislative and otherwise, to secure the advancement of women.

2.2.2. The Right to Life

The Right to Life **with dignity** and more explicitly, the right against practices derogatory to human dignity are enshrined in Articles 15, 17, 21, 23 & 24. Article 15 (2) and Article 17 embody the spirit of the Indian Constitution, and give life to the Preamble. This aspect of non discrimination merits serious consideration because entrenched practices of caste based discrimination and untouchability intersect with gender based discrimination such that one index cannot be priced apart from the other. Article 15(2)(a)&(b) prohibit any discrimination with regard to *(a)* access to shops, public restaurants, hotels and places of public entertainment; or *(b)* the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 17 of the Constitution reads, "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance to the law." Articles 23 and 24 give citizens the right against forced labour, exploitation and child labour.



2.2.3. The Right to the Freedom of Religion

The Right to the Freedom of Religion is guaranteed under Articles 25-30, besides being an intrinsic part of the Preamble and the Equality Code of the Constitution. The significance of this cluster of fundamental rights needs to be underscored, especially in view of the **Gujarat carnage** and the continuing oppression of religious minorities in the secular democratic republic of India.

2.2. 4. Enactment of Special Legislations

In consonance with constitutional safeguards, the Government has enacted various laws. The discriminatory provisions of law are being progressively reviewed. The National Commission for Women, the Department of Women and Child Development and the Parliamentary Committee on Empowerment of Women have reviewed various laws and recommended amendments to many of the laws with the objective of promoting equality and to amend discriminatory provisions. The right to property under Hindu Law now confers on women the right to inherit property; the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 protect Dalit and Adivasi people from caste discrimination and violence by private actors; The Domestic Violence Act, 2005, is a civil legislation that offers a range of protection for victim-survivors of domestic violence; child labour and bonded labour are abolished by special legislations.

2.3. CRITICAL AREAS OF CONCERN

- Para 20 of the II and III Report of the Government of India in response to Paras 74-75 of the Concluding Comments of the CEDAW Committee, do not address the situation of caste discrimination on the ground at all. Most worrying is the failure of judiciary in various jurisdictions to bring justice to dalit survivors of atrocities, and the fact of the state being a violator of Article 17 and the law banning manual scavenging.

- While justice for the Muslim people of Gujarat continues to be a mirage, the conviction of Zahira Sheikh for contempt of court by the Supreme Court and the rejection by the Hon'ble President of the clemency petition for Zahira, a witness-survivor of the gruesome Best Bakery massacre in Baroda, Gujarat, in 2002 causes concern about the access of minority women to justice. Even though Zahira had repeatedly changed her statements, it must not be forgotten that she is a survivor first and foremost and her "hostility" to the prosecution is a product of surviving in a highly hostile and insecure environment, particularly in the absence of a witness protection programme or rehabilitation.

- The Right to Food petition in the Supreme Court underscores the magnitude of the crisis with respect to starvation. Skewed development policies are directly responsible for this situation and schemes like the Food for Work programme only address the symptoms without going to the root of the malaise.

- Displacement consequent on 'development' continues to pose a major crisis to the survival of rural and adivasi people. Related as it is to issues of wildlife conservation, and development programmes and projects, the critical concern of human security, survival and the right of citizens to residence and livelihood have to take precedence over all other concerns that the government might have. Specifically with reference to adivasi areas, the protections guaranteed to Scheduled areas must not be eroded through judicial interpretation or state impunity.

- The prohibition on performance of degrading forms of labour must be enforced forthwith. There can be no negotiation or time frame especially in cases where the state is the violator, as in the case of manual scavenging.

- In India, the right to equality for women has been primarily interpreted through case law, resulting in varying interpretations and sometimes unfavourable interpretations for the rights of women. The

judiciary has also been reluctant to examine the controversial area of personal laws and hold provisions violative of the right to equality.

- The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. The forms of gender-based violence prevalent in India include domestic violence, dowry linked violence, sexual assault, sexual harassment and sex-selective abortion, violence against dalit women, violence through the medium of the law on grounds of sexual orientation.

2.4. RECOMMENDATIONS

- The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.
- Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.
- The right against discrimination as the cornerstone to human rights and fundamental freedoms as embodied in Article 3 of CEDAW, with respect to persons with disabilities [of which, according to the official estimate, women constitute 9 million in India], must be brought within the purview of Articles 14 and 15 of the Indian Constitution.
- The Mid Term Appraisal of the 10th Five Year Plan by the Planning Commission suggests that the Ministry of Social Justice and Empowerment should hold itself accountable for the persistence of manual scavenging and present an action taken report before the 2005-06 Union Budget is approved. This is an issue that must be topmost on the priority of the government, since it contributes to the persistence of the problem.
- The issue of starvation must be acknowledged officially and addressed through a convergence between different departments as well as initiatives in participative/deliberative democracy at the local level with respect to production and distribution of foodgrains as well as land distribution.
- Disability Rights must be brought within the constitutional framework, and all laws, especially relating to employment, which discriminate against or bar persons with disabilities must be repealed forthwith.
- Sexual orientation must be brought within the constitutional framework and Section 377, which criminalizes homosexuality must be repealed immediately, as a first step towards ending discrimination against queer people, in response to the demands of the queer rights movement in India and in tune with international trends in this area of human rights.

An analysis of the Government's performance would be incomplete without an in-depth evaluation of the legislative lacunae in the area of gender based violence and discrimination in different sectors **including the Armed Forces.**



End Notes

[1] In 2002 the Indian Army had 980,000 active troops, along with an Army Reserve of 800,000.

[2] *Lt. (Mrs.) Indira Kumari Kartiayoni vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi and Others.* AIR 1991 SC 416.

[3] Goel DS, Kumari R, Saldanha D, Kaushik A, Gupta L, Deptt of Psychiatry, Base Hospital, Delhi Cantt-10, "Attitudinal profile of military nursing service officers," *Medical Journal Armed Forces India. 2000 Apr; 56(2): 140-2.*

[4] Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, *Fourth Report on Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs: Atrocities on Scheduled Castes and Scheduled Tribes and Pattern of Social Crimes towards Them*, Government of India, 2004-2005, para. 1.4.

[5] National Commission for Scheduled Castes and Scheduled Tribes, *7th Annual Report 2001-02*, New Delhi, 2002.

[6] National Commission for Scheduled Castes and Scheduled Tribes, *Vol. 1, National SC/ST Commission 4th Report 1996-97 & 1997-98*, New Delhi, 1998, p.231.

[7] National Federation of Dalit Women, NGO Declaration on Gender and Racism, Racial Discrimination, Xenophobia and Related Intolerance, World Conference Against Racism, 28 August to 7 September 2001, Durban, South Africa. National Federation of Dalit Women, Reading Materials prepared for the National Consultation on Gender and Racial Discrimination, New Delhi, February 2001.

[8] *Transforming Pain into Power: The Manifesto of the National Federation of Dalit Women*, nd.

[9] Planning Commission, Mid Term Appraisal of the Tenth Five Year Plan, Part II, Chapter 4.

[10] Gita Ramaswamy, India Stinking: *Manual Scavengers in Andhra Pradesh and their Work*, Pondicherry, Navayana Publishing, 2005.

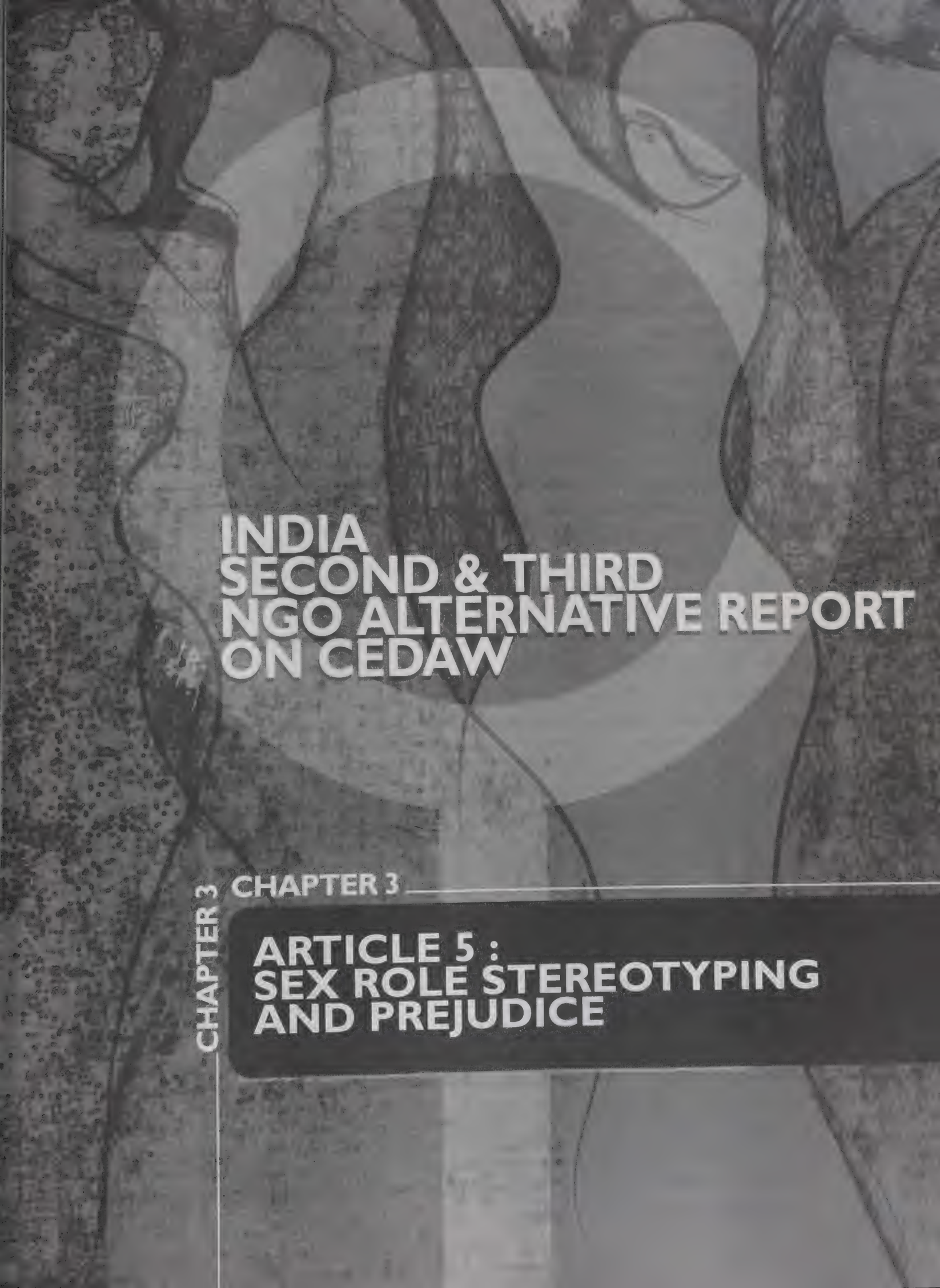
[11] Forest Survey of India, *State of Forests Report*, 2001, cf. Campaign for Survival and Dignity, *Endangered Symbiosis: Evictions and India's Forest Communities*, Report of the Jan Sunwai (Public Hearing) July 19-20, 2003.

[12] Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 11, cf. Campaign for Survival and Dignity, *Endangered Symbiosis: Evictions and India's Forest Communities*, Report of the Jan Sunwai (Public Hearing) July 19-20, 2003.

[13] Siddharth Narrain, "The Queer Case of Section 377", *Sarai Reader 2005: Bare Acts*, pp. 466-469.

[14] AIDS Epidemic Update, UNAIDS, World Health Organisation, December 2004

[15] Vivian F Go, Johnson Sethulakshmi, Margaret E Bentley et al., "When HIV-Prevention Messages and Gender Norms Clash: The Impact of Domestic Violence on Women's HIV Risk in Slums of Chennai, India", Department of Epidemiology, Johns Hopkins University, Maryland, USA; Y R Gaitonde Centre for AIDS Research and Education, Chennai, India; and Carolina; September 2003.



INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 3

CHAPTER 3

ARTICLE 5 : SEX ROLE STEREOTYPING AND PREJUDICE



SEX ROLE STEREOTYPING AND PREJUDICE

3.1. PREVALENCE OF THE PROBLEM

The constitutional right to equality between men and women and the right to equality before the law are far from realized. The reasons for the persistence of gender inequality despite the various legislations that have been enacted to bring about equality are to be found primarily in cultures and traditions that perpetuate prejudices and sexual stereotypes and the rituals and practices that stem from them. These stereotypes are reinforced by the media and education system as well.

3.1.1. Culture and Tradition

Women, as members of the community, embody culture in deeply gendered ways and nurture traditions and practices that perpetuate stereotypes. The patriarchal construction that the honour of nations, communities and families rests on women, serves to control women. The ideal woman is one who is the voice of the community - and this definition keeps shifting and getting redefined constantly. In this process, women become victims of extreme violence.

Will Someone Speak for Imrana?*

Syeda Hameed

Member, Planning Commission; founder of the Muslim Women's Forum; and former member of the National Commission for Women.

A woman is raped by her father-in-law. She raises alarm. The village *panchayat*, which includes a local *Maulvi*, decrees that she is no longer 'pure' for the husband and so must marry her father-in-law. It also decrees that the marriage now stands annulled and her five children will remain the responsibility of her husband, Noor Ilahi. This village verdict is supported by a well-known seminary, Darul Uloom, Deoband.

This, in a nutshell, is the story of Imrana Bibi of Chhartawal village in district Muzaffarnagar, Uttar Pradesh. Muslim Women's Forum team members - Naheed Taban and Kishwar Saleem, who visited Chhartawal and Kookra (Imrana's native village) on June 21, 2005 - confirm the sequence of events.

If one could rip aside the veil that shrouds domestic spaces, one would find an Imrana, a Mohammad Ali and a Noor Ilahi in many households, regardless of religion, caste, class and community. But the silence that gags daughters and daughters-in-law kills and buries such cases within household spaces. Imrana, having broken this silence, is not forgiven.

Within days, seminarians of Deoband and some venerable members of the Muslim Personal Law Board endorse this obscure verdict. Imrana - initially determined to stick to her husband despite the strictures of Maulvis and the *biraadari* (community) - capitulates, saying, "I will do what is required by the *Shariah*."

The issue is not whether Mohammad Ali wants to marry Imrana, but that he raped her. Mohammad Ali committed the crime of *zina bil jabr*, meaning forced sexual intercourse. The entire spirit underlying the Quran holds him guilty of the worst *gunah* (crime) and places him on the list of worst offenders. And what does this rape have to do with marriage?

In the past, reformist scholars and maulanas - such as 19th Century intellectuals like Maulana Asraf Ali Thanvi and Maulana Altaf Husain Hali - had warned the community against allowing its anti-gender attitudes to become identified with Islam. When will modern-day obscurantist religious leaders begin to heed their call and learn to respect gender?

Norms that decree that **women's place is in the home**, that marriage is inevitable and that they have no identity apart from their husbands dictate women's lives in most of Indian society.

As a result of their identity being totally merged with their husbands, women constantly devalue themselves and have a very low sense of self worth. Traditions constantly reiterate that women's bodies and their personhood have no value. Cultures perpetuate the view of women as objects that are there for men's use. This is the reason why women are trapped in violent homes and abusive relationships and being killed-dowry and polygamy are examples.

Girls similarly devalued, are being killed either immediately after birth or in the womb. **"Raising a female child is like watering your neighbour's plant"** is a popular proverb still doing the rounds in the Indian State of Tamil Nadu's Salem district. 'Saheli,' a Delhi based NGO, has reported that between 1978-82, nearly 78,000 female foetuses were aborted after sex determination tests in the country. Between 1986-87, 30,000 to 50,000 female foetuses had been aborted. Between 1982-92, the number of sex determination clinics multiplied manifold and nearly 13,000 sex determination tests were estimated to have been done in seven Delhi clinics themselves.[1] Meetings with various chapters of the Indian Medical Association in different parts of the country have shown that doctors, while being conscious of the legislation, still offer abortion of female fetuses, both for commercial gain, but also because they too subscribe to ideas of son preference. This, by several accounts is also their way of "protecting" their patients from domestic violence and harassment.

Since widowhood in this culture is irreversible, women are either condemned to a life of widowhood or being killed as **sati maatas**. The immolation of Roop Kanwar followed by the acquittal of all the accused and the use of the Fundamental Right to Freedom of Religion by perpetrators to secure impunity demonstrate this subordination of women.[2]

The judiciary in different jurisdictions supports the view that men accused of rape can be given reprieve if they offer to marry the victim-survivor. There have been cases in Delhi and Mumbai where this question has been deliberated on with the active participation of the judge. Several participant officers in a series of judges' symposia in Andhra Pradesh in 2005 asserted that this was the only way ultimate justice in the long term could be assured to victims and their societal reputations.

Even **at the workplace**, the fact that women are not seen as workers or colleagues, but in sexual terms, results in sexual violence against women in the workplace. The Vishakha judgement is of course a landmark in proactive statutory interpretation. However this decision does not in fact offer protection to the large number of informal sector women workers. Women workers in an export processing zone in Tamil Nadu, for instance spoke of the ways in which they were harassed by employers every day because they were women. They spoke of the constant and humiliating verbal and physical abuse that they suffered at the hands of the male supervisors and sometimes at the hands of the owners of the units that they worked in. Younger, relatively better-looking and better-dressed women were able to wrangle several favours from their supervisors such as choosing the batches they preferred to work, promotions etc. The day-to-day operation of such discrimination at the worksite inhibited the emergence of any solidarity among the women workers.[3]

Cultural norms that dictate that girls and women should not leave their homes and go out to work render working women and women students to sexual violence.

> On February 17, 2005, the principal of a government school in north Delhi raped a Class 10 student of the school. The principal, who was also the girl's private tutor, took the girl to three of his friends. The four eminently respectable men - a school principal, a vice-principal and two businessmen - gang raped the 16-year old girl during the night. The next morning they sent her back to her parents.

In recent months, several instances in which school teachers and principals have sexually abused girl students, have come to light. Will male students learn that rape is legitimate?[4]

This violence takes on the added angle of caste in the case of dalit women. Because religious identities rest on women, communal violence often involves sexual violence against women, as we have seen with Gujarat.

What is the reason for the persistence of stereotypes despite the existence of protective legislation?

Redressal mechanisms are often constrained by the very stereotypes they try to remedy. Women who take



husbands to court on charges of cruelty are told that they are educated and hence unwilling to adjust to a reasonable man.[5] In February 2004, the Delhi Police advertised 'Dos and Don'ts for Women' in leading newspapers. Women were advised to avoid dark and lonely spots; not talk back if somebody passed lurid comments; and to make sure their parents/spouse have their mobile phone number. This well-meaning advice is fraught with patriarchal values. Women have to go out, and have every right to do so. They cannot always choose their routes or timings. It is for the police and civic authorities to ensure that there are no dark and lonely spots in public areas. They cannot shift the onus for protection on to the victims.[6]

3.1.2. The Media

Media portrayals of women in subordinate positions are largely responsible for the perpetuation of cultural stereotypes. Mass media reinforces the image of women/girls as commodities, men as decision makers.

> Women appear as faces on the television, or as bodies, but only rarely as persons with ideas, skills, and expertise. They are employed as presenters, hostesses, scorers, actors, dancers, and singers; they also form part of the audience shown in some programmes; yet they are rarely called upon to voice their opinion on serious matters such as political currents, or economic policy unless the programmes concerned themselves are on women's issues. In fact, most women experts complain that they are rarely asked to give opinion unless it is on a woman-centred issue.[7]

Cinema, television, popular literature, children's literature and textbooks show women in traditional roles.

A. Print Media

Indian Print Media includes 46000 newspapers and periodicals, among them 5000 dailies, nearly 17000 weeklies, 13000 monthlies, 6000 fortnightly and 3000 quarterly publications. These are published in 101 languages. Studies have found that the prejudices against women in the print media is reflected not just in the manner and volume of reporting but also in the scant numbers of women found employed by Newspaper publishers and the absence of a clear gender policy in most newspapers. [8]

> The headline of a report that discussed a meeting of women sarpanches under the aegis of the Hunger Project, was **"Kitty Party with a Difference".** *The Hindu*, 02 October 2004.

There is also the condonation of extreme forms of sexual violence and battery in the mass media that has troubling implications for practices of violence in contemporary Indian society.

> The cover title for the 4 May 2003 issue of The Week national magazine read as "Rape Racket", and the cover story exclusive entitled "Rewards of Rape" and several other articles sought to portray Dalit women as filing numerous false cases under the *Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989* in order to receive monetary compensation and exact revenge on others. Reading through the articles, however, revealed a different view of open caste manipulations by dominant caste villagers, coercing Dalit women who are socially or economically dependent on them into filing these complaints.[9]

Stereotyping in the media also foregrounds the image of the able bodied dominant Hindu woman as the norm and constructing relationship only along lines of heterosexuality, both of which invisibilise the predicament of caste, religious and sexual minorities in the country, as well as women with disabilities, rendering them more vulnerable to discrimination.

B. Mainstream Cinema

The power of cinema as a visual medium and its grip over people can scarcely be understated. Violence against women is an essential ingredient of hindi films. Women are largely confined to the roles of mother, whore, wife, mother-in-law, their function being to subserve male interests and service the needs of men. The most popular way of keeping women in place is through the routine use of violence.

Films depict women entering new fields of work in very poor light. Women bus conductors, policewomen and women jailors for instance are either shown as comic relief or for sexual titillation. The film *Suryavamsam* [Telugu, Tamil] for instance shows a woman conductor as a sexual object, someone who in the course of her duty provides titillation to male passengers. Similarly working class women - street vendors, domestic workers, municipal labourers - are always portrayed as "immoral" women.

While there are some instances of individual women being portrayed as resisting patriarchal domination, violence or injustice, the mainstream visual media has consistently caricatured women collectives and their struggles against structural violence, especially struggles against sexual and domestic violence. Women's groups are portrayed as consisting of affluent women with little else to do but to break homes and create marital discord.

C. Television

The following observations about television viewing in Kerala are true of a large part of the country as well:

> Television has entered the Kerala household in a big way and its influence on the Malayali psyche has assumed great proportions. A large majority of Malayali households possess televisions sets or have access to them. Age, gender, class, caste or educational status is no hindrance to television-viewing. The practice of watching TV, talking about its various programmes, and often imagining its world to be real, has become almost a way of life. Lifestyles and work schedules are adjusted to accommodate TV viewing, particularly, viewing of favourite programmes. Patterns of socialising time schedules for religious practices and prayers and for shopping and business transactions - all have undergone among Keralites - men, women, and children. In fact, social visits, religious rituals, and even study timetables are decided after consulting the programme schedules of the favourite television channels. The daily timetables for students prescribed by the school authorities allot a specific timeslot daily for television viewing. Cinematic dance, dress parades and such other entertainments, clearly influenced by the television, are now part of the stage performances of every school or educational institution. The television programmes often extend beyond their professed domain and occupy not only leisure time but encroach into study time and vitiate working environment. Television serials and their story lines, news coverage, and presentation styles (including the personality and make-up of the presentations) are discussed, not only in the home, but also at the work place. Official duties and responsibilities often yield place to discussion of the story lines of the serials viewed the previous evening. The Malayali penchant for television causes her/him health hazards too. That continuous TV watching is injurious to the eye is well known. Besides, sitting before a TV for hours together causes other health problems too. This is particularly true for women who seek entertainment at home in preference to other leisure time engagements, which would give physical exercise and mental relaxation, may be outside home.[10]

The idea that marriage is ultimate goal for women is reinforced in many different ways. Single women are portrayed as people whose main aim in life is to disturb families. This stereotyping extends to children's programmes as well. There is an increasing trend in the portrayal of women as villains in television serials. Educated women who go out to work are inevitably shown as being arrogant. Inequalities between girls and boys are completely normalized and glorified. Doordarshan has the possibility of regulating the portrayal of women and of putting in place a different norm. Instead, women's programmes in DD push women back into those same stereotypes. There is no discussion in regional television networks on CEDAW, the Beijing Platform for Action and other human rights instruments. Visual campaigns on critical issues like female feticide are unimaginative and monotonous. Womens' programmes are largely confined to cookery, beauty, good housekeeping and at the most family planning. Ministers and political leaders, when they speak on television, stress women's role as homemakers and wives and actively discourage women from entering the public arena.



Tamil TV serials portray one half of the women characters as dependants and sufferers who often cry thus enforcing the age-old stereotypical view that women are generally weak and can't do anything on their own. They perpetuate the view that it is always good for women to be patient and accept any mistreatment that she may be subjected to by her husband and his family and sometimes even by the society. The remaining women are typecast as outright evil, plotting and abusive characters and go to any extent (even hiring goons) to settle personal scores. It is also not uncommon that one woman in each serial is shown as the super-woman who is like a saint and will achieve anything through her unimaginably perfect characteristics.[11]

A study conducted by the Indian Science Monitor (ISM) found that 70 percent of those who watched these serials were opposed to the negative characterisation of women. Further women viewers, according to the study find this kind of portrayal dangerous to the social fabric.

After a concerted campaign by women's groups against the portrayal of women in television serials, the PC Joshi Committee was set up in the 1980s to form guidelines on the depiction of women. According to these guidelines, portrayals of women had to take note of all facets of their lives as workers, as contributors to the well-being and survival of the family and the national economy. Care ought to be taken that women's dimensions form an integral part of all programmes and not merely confined to women's programmes. This report was never formally tabled in Parliament by the government and officially accepted.

"What worries me is that so many women are coming into television as directors and writers and there is still no change (in the stereotyping of women in popular television serials)"

- Shabana Azmi[12]

An even more worrying trend is the use of television shows to conduct media trials on current issues. While the discussion of an issue and audience response can be a way of generating interest, the reality show has become a nightmare for women after the Gudiya episode.

Kalpana Sharma, Remember Gudiya?, The Hindu, Sunday, 19 November 2006

Gudiya's case was actually tried live on a television channel. ..Gudiya is the young woman from Mundali village in Meerut district, Uttar Pradesh. She thought her soldier husband Arif, who she had known for barely two weeks after her marriage, had died when he disappeared during the 1999 Kargil conflict. He was presumed to be dead or a deserter as his body was not found. In 2004, after four years, Arif came back to India as part of an exchange of prisoners between India and Pakistan. During his absence, Gudiya remarried. She was expecting a child from her new husband Taufiq when Arif returned.

The making of a media spectacle

What should Gudiya do? Go back to Arif or stay with Taufiq? And what about the child? An intensely personal dilemma was first made the subject of debate in the village *panchayat* where 1,500 people ruled that Gudiya must return to her soldier husband. And shortly after that it was turned into a live television spectacle as all kinds of "wise" people and experts discussed what Gudiya should do. The anchor insisted that she should decide then and there, while the programme was still on the air. A confused and overwhelmed Gudiya said she would go back to Arif. Later she said, "It was everybody's wish. Who knows what will happen to me? I may die or the child may die. No one can say anything."

The child did not die but Gudiya did, within a year of giving birth. And just last month, both Arif – who continues to take care of her child, a boy called Mateen – and Taufiq have remarried. Thus Gudiya's case is closed. But is it? Does it not still pose questions about her right to decide the course of her life and whether the media should have turned her dilemma into a media spectacle? [13]

D. Advertising

Advertisements in India increasingly tend to commoditise the female body in the most derogatory ways: Kitchen sinks hanging from women's belly buttons; magic creams transforming the dark-skinned, neglected woman to a fair-skinned desired one; the choice of the right detergent becoming the mark of woman's intelligence; nail enamel, and moisturising cream becoming the turning point in women's liberation; women's inner wear motivating them to assault men.

There is also a redefinition of relationship with desire for commodities determining the strength or weakness of relationships: a nine-year-old boy is the desired husband because of the brand of paint used to paint his father's house; the car is the reason why a woman leaves her husband for another man; molestation and harassment of women becomes the normal way in which young adult men entertain themselves;why not a son instead of a dark daughter? Parental responsibility is about saving up for the son's education and the daughter's wedding; husbands wish they could exchange old wives for new like the watch that is on offer; husbands get served by two wives, like the toothpaste that says, "buy one, get one free." "Woman is woman's worst enemy" - so the cliché goes. In the world of advertising, this cliché becomes the truth. Envy is the emotion through which women relate to their peers. need to struggle and shout against various discriminatory social practices and structures.[14]

In her study on Women and Television in Kerala, V.T. Usha observes:

> "Most women viewers whom we interviewed asserted that they did not make purchases under the influence of such demeaning advertisements. The only advertisements they admitted that they enjoyed viewing were the ones, which featured children or happy family situations."

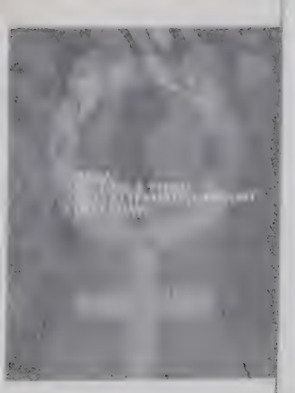
3.1. 3. Textbooks and Classrooms

There are very minimal changes in school curriculum to make a dent in stereotypic attitudes and mind-set. Especially in rural areas, discrimination and stereotyping are prevalent in schools. Girls face more restrictions. There is little opportunity for girls in the field of Sports where one can develop confidence and actualize her potentials.

Gender biases continue to exist in many school textbooks, for instance those brought out by the Bihar State Textbook Publishing Corporation, Rajasthan State Textbook Committee and UP Textbook Department for Basic Education. A recent study of these textbooks shows that they depict stereotypical behaviour: men active (carrying sticks, playing games, digging, leading his family while his wife walks behind him) and women relatively passive (doing household work, playing with dolls, docile). The stories have predominantly male characters, particularly stories of leaders, heroes and warriors. Biased textbooks are bound to have a very powerful negative impact upon children - reinforcing social messages about the superiority of males and the inferiority of females. At an even deeper level, language is inherently gender biased, and if used unselfconsciously, this sexism is perpetuated.[15]

Amongst the findings of a survey report by Friends for Education, a forum for the uplift of education, culture and civic sense, it was found that the average length of a primary textbook in India is about 115-130 pages with every text having an average of 80-100 illustrations with 52 per cent depicting men and boys, 28 per cent neutral objects, 14 per cent mixed and only 6 per cent portrayed women and girl - children. In these depictions Men man spaces that are conventionally and socially seen as public and outdoor assignments that project them in stronger roles like policemen, engineers, lawyers, professors, pilots, mechanics etc. Even today the textbooks of the primary children by NCERT show gender bias as most of the really adventurous and enterprising roles like that of astronauts, soldiers and sportspersons, are men.

The stereotypes in textbooks find their way into classrooms as well. Schools purvey gender stereotypes, hardly different from the rest of society. Girls huddle separately within the classroom in co-educational



schools. In some schools, they are denied facilities to play or use the science lab - which boys have access to. Many teachers talk exclusively to boys, paying no attention to the girls, and only (some) boys answer or are active in class. Despite education being touted as a tool for empowerment, recent and old research clearly indicate that schooling is not an empowering experience for most girls. Most schools have next to no notion of girls' or women's rights. Textbooks are suffused with gender bias (far more stories centre around boys than girls, far more pictures of boys and men, and far more boys and men in stereotypical active roles, girls and women in passive roles). This serves to reinforce, in the minds of children, that gender is 'natural'.[16]

Gender stereotypes are reinforced through curricular and extra-curricular means, such as home science being offered exclusively to girls, and sports to boys. Teachers compound gender discrimination by asking girls to make tea, wash cups and sweep floors in the classroom, as well as taunting them with statements like, "Why do you study? Anyway you will be sweeping floors and cleaning dishes!" Thus in our schools there is a 'hidden curriculum' perpetuating gendered stereotypes of 'strong, competitive male wage-earners' and 'docile, homely girls' (data from discussions with Bachelor of Elementary Education students, Lady Shri Ram College, 2004-05).[17]

As long as the visual and print media continue to portray women in a derogatory manner, the perpetuation of subordination on the ground will not change, because of the power that media exercises over people.

3.1.4. Breaking Stereotypes

Village Karauli, Rajasthan. A woman, Basanti, reported that she was raped. The Panchaayat was convened. The Panchaayat heard Basanti and everyone was convinced that her modesty was outraged by one Mahesh. In the meeting of the Panchaayat the 25 year old mother of a child, the victim, was the only woman. This congregation delivered its judgement: Basanti?s husband Raja was directed to do with Mahesh?s wife Urmila what Mahesh had done to Raja?s wife! Basanti did not accept the verdict. She said that the crime was committed by Mahesh. Why should his wife be punished? To cut a long narrative short, now Urmila also barged into the Panchaayat meeting. Both Basanti and Urmila hugged each other. Other village women also trickled in slowly! This was unheard of. Women in Panchaayat! The male Panchaayat walked out. Urmila went and occupied the seat. She said that her judgement was that her husband Mahesh should visit every family in the village and beg pardon of the women there, and then he should leave the village for one month. She knew, she said, that this judgement would be unacceptable. Now I deliver the part of the judgement that would be acceptable. I am not going to live with a rapist.[18]

Ambujam Anantharaman, Women on Track

The Tribune, Online Edition, Sunday, June 18, 2006, Chandigarh, India

Behind every successful and safe train journey is the hard work and care of thousands of gangmen and gangwomen, who inspect and maintain the railway track. Gangmen and gangwomen work as guards on the railway tracks, ensuring that the 10,000 trains of the Indian Railways can ferry millions of passengers and tonnes of freight safely across the country.

Prior to 1980, the Railways hired only men for gang duty, mainly due to the arduous nature of the work.

Today, there are over 3,000 gangwomen with the Railways, and around 500 are posted with the Southern Railway. The numbers are likely to increase as selections are now being done through the Railway Recruitment Boards (RRBs). The selection involves running 400 metres, lifting weights and clearing a written test that examines the candidates' general knowledge and arithmetic skills. "Strangely, most of the women who apply are literate," says Priyamvada Viswanathan, Member Secretary, RRB, Chennai.

In recognition of their service and dedication, the gangwomen of Chennai Division were conferred the Divisional Railway Managers Award during the Railway Week in April last year.

The Chief Track Engineer, Southern Railway, S K Gupta, says gang women have become an integral part of the railways. Acknowledging that women work better in a gang when they have other women with them, the Railways has also formed all-women gangs. In other gangs too, rarely is there a single woman among many men.

Kumudha says her work has equipped her to send her daughter to an engineering college to study information technology. The high point of her career was when she saved a young woman from committing suicide on the tracks.

3.2. CRITICAL AREAS OF CONCERN

- The persistent failure of laws to check the discrimination against women - in cases of sati, domestic violence, sexual harassment at the workplace, rape, sex determination and sex selective abortions and the criminalizing of sexual diversity to name a few - have to do in large measure the power of sexual stereotypes in conditioning the minds of functionaries in the criminal justice system and the medical profession. Doctors, police personnel, lawyers and judges believe in the subordination of women and the need to circumscribe their movements.
- The absence of clear censor guidelines on sexual stereotypes results in the unhindered portrayal of the glorification of women's subordination.
- The absence of any regulations in television programmes results in a worse portrayal of women in serials. Studies have shown that women viewers oppose demeaning stereotypes in serials and commercials.
- The resilience of textbooks to campaigns by women's groups on breaking stereotypes points to the fact that people formulating the syllabus themselves subscribe to these views.



3.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India in Articles 14, 15 and 21 assure to every Indian citizen, the right to equality and equal protection of the laws, the right against discrimination and the right to life with dignity. In addition to these, and in tune with these constitutional provisions, there are a number of special legislations with respect to property rights, against domestic violence, against sexual assault, prohibiting sex determination tests that have been enacted with the objective of bringing about gender based equality in a deeply unequal society. There are also laws that prohibit indecent representation and obscenity in the media. The Press Council of India has a complaints and monitoring mechanism that acts as a check on the print media.

Article 51 (A)(e) of the Constitution, which enjoins on every citizen of India, the duty "to renounce practices derogatory to the dignity of women." Although this is not a legally enforceable provision, it should be read as a limitation on the Right to the Freedom of Expression under Article 19(1).

Article 19(1)(a) guarantees the right of citizens to the freedom of speech and expression. Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and the right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and Political Rights, 1966, to which India is a signatory and had ratified provides "everyone shall have the right to the freedom of expression, to receive and impart information and ideas of all kinds", but clause (3) thereof imposes corresponding duty on the exercise of rights and responsibilities.

In re D.C. Saxena the Supreme Court held that

> "It is doubtless that freedom of speech and expression guaranteed by Article 19(1) (a) is one of the most precious liberties in our secular, socialist republic... This liberty may be regarded as an autonomous and fundamental good and its value gets support from the need to develop our evolving society from unequal past to a vigourous, homogenous, egalitarian order in which each gets quality of status and of opportunity; social, economic and political justice with *dignity of person...*" (emphasis added. In re D.C. Saxena, AIR 1996 SC 2492)

To this end it is the responsibility of the State

> "to secure to the citizens freedom to develop his faculties, freedom to think as he will, to speak as he thinks and to read as *indispensable tools to the discovery of truth and realization of human knowledge and human rights...* The purpose of the freedom of speech is to understand political issues so as to protect the citizens and enable them to participate effectively in the working of a democracy in a representative form of Government.
>
> *If maintenance of democracy is the foundation for the speech, society equally is entitled to regulate freedom of speech or expression by democratic action.* The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The state has legitimate interest therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libelous speech or expression. *There is a co-relative and duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation.* Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libelous so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market place. *If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.*" (Emphasis added. In re D.C. Saxena, AIR, 1996, SC 2492-2493)

Since a precondition of the enforcement of individual rights is that the corresponding rights of other persons be safeguarded, the freedom of expression cannot be exercised in a manner that undermines that rights or dignity of any individual or class of individuals. This limitation, arising out of the 'due recognition and respect for the rights and freedoms of others', is stated in Article 29(3) of the Universal Declaration of Human Rights, 1948.

Article 118 of the Beijing Platform for Action adopted at the Fourth UN World Conference on Women held at Beijing in 1995, defines Violence Against Women as a

> "manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement. *Violence against women throughout the life cycle derives essentially from cultural patterns*, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion *that perpetuate the lower status accorded to women in the family, the workplace, the community and society...Images in the media of violence against women, in particular those that depict* rape or sexual slavery as well as *the use of women and girls as sex objects ... are factors contributing to the continued prevalence of such violence, adversely influencing the community at large, in particular children and young people.*"

Since the media is an important and powerful tool of public and- political discourse, demeaning and stereotypical representations militate against notions of democratic rights and equal citizenship for women, by reinforcing patriarchal stereotypes of women as chattel to be exchanged between men. 'Humour' is used to normalize discrimination against women in the popular consciousness.

Article 236 of the Beijing Platform for Action:

> "The continued projection of negative and degrading images of women in media communications-electronic, print, visual and audio - must be changed. Print and electronic media in most countries do not provide a balance picture of women's diverse lives and contributions to society in a changing world. In addition, *violent and degrading* or pornographic *media products are also negatively affecting women and their participation in society*. Programming that reinforces women's traditional roles can be equally limiting. The world-wide trend towards consumerism has created a climate in which advertisements and commercial messages often portray women primarily as consumers and targets girls and women of all ages inappropriately".

Article 244 of the Beijing Platform for Action adopted at the Fourth UN World Conference on Women which specified measures to be taken by the mass media and advertising organizations:

> (a) Develop, consistent with freedom of expression, professional guidelines and code of conduct and other forms of self-regulation to promote the presentation of non-stereotyped images of women;
>
> (b) Establish, consistent with freedom of expression, professional guidelines and codes of conduct that address violence, degrading or pornographic materials concerning women in the media, including advertising.

The Beijing Platform for Action states as its Strategic Objective J1, the establishment of media watch groups by non governmental organizations as well as professional media associations.

The Beijing Platform for Action states as its Strategic Objective J.2: "Promotion of a balanced and non-stereotyped portrayal of women in the media."

Article 243(d) (e) &(f) detail the Actions to be taken to achieve this objective by Governments and international organizations, *to the extent consistent wit freedom of expression:*



(d) *Encourage the media to refrain from presenting women as inferior beings* and exploiting them as sexual objects and commodities, rather than presenting them as creative human being, key actors and contributors to and beneficiaries of the process of development.

(e) Promote the concept that the sexist stereotypes displayed in the media are gender discriminatory, degrading in nature and offensive.

(f) Take effective measures or institute such measures, including appropriate legislation against pornography and the projection of violence against women and children in the media.

3.4. RECOMMENDATIONS

- Gender sensitive guidelines and mechanisms have to be evolved in order for the media to reflect gender rights in a sustained manner.
- Norms for reporting and discussing issues/cases in the media must be set out carefully, with a view to prevent trials by the media which derogate women's rights to privacy and choice.
- Cultural diversity brings with it multiple forms of gender differentiation and discrimination. The media must reflect this diversity in order to be able to report on socio-cultural practices in an unbiased manner.
- There has to be a concerted plan of action drawn up by the government in close consultation with women's groups, human rights groups, progressive media persons and film makers - that involves not just training but also the production of short films and imaginative audio visual material that is presented in the mass media at prime time to counter resilient stereotypes.
- There is need to develop censor guidelines. The situation will improve if the Censor Board consists of persons who are familiar with cinema and visual media as well as persons who have worked with women's groups.
- The PC Joshi Committee findings should be put in place immediately, in tune with women's demands, and these norms should be binding on commercial advertising as well.
- In deciding the composition of syllabus committees, alongside expertise in the subject, proven gender sensitivity should also be a qualification. It is only then that the content of textbooks will change.
- Best practices and efforts to break stereotypes must be disseminated through the electronic and print media, but must also simultaneously be reflected in the school curricula.

End Notes

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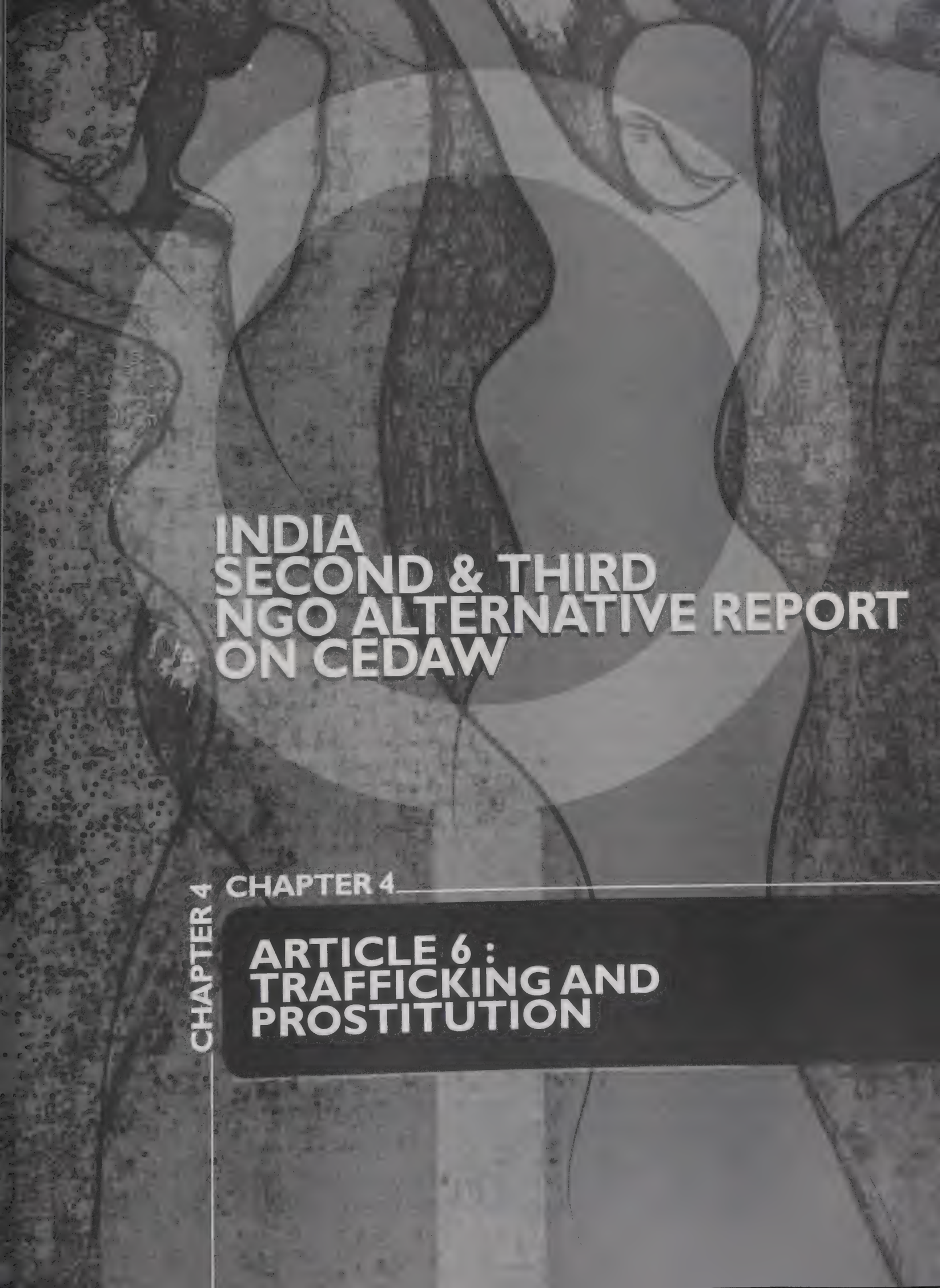
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INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 4

CHAPTER 4

ARTICLE 6 : TRAFFICKING AND PROSTITUTION



TRAFFICKING AND PROSTITUTION

4.1. PREVALENCE OF THE PROBLEM

Trafficking, which is a form of abusive and irregular migration for commercial sexual exploitation and other illegal purposes[1] has reached alarming proportions in the past two decades globally; and more so within the South-Asian Region. Across this region, human beings, especially women and children are trafficked within their own countries and across international borders against their will in what is essentially a clandestine slave trade.

A study[2] in the six metropolitan cities of India, suggests that 94% of trafficked women in India are from rural India and from the lower socio-economic strata. The report identifies Andhra Pradesh, Karnataka, Tamil Nadu and West Bengal as the highest supply states with 24%, 22%, 17% and 14% respectively.

> According to the latest research on Trafficking in Women and Children (2002-2003) in India by the Institute of Social Sciences, girls and women are being trafficked into Delhi from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Jharkhand, Rajasthan, Madhya Pradesh, Maharashtra, Gujarat, Goa, Assam, Arunachal Pradesh, Uttar Pradesh, Uttaranchal, Bihar, Bangladesh and Nepal. While a considerable number of victims are kept back in Delhi, others are re-trafficked to Haryana, Maharashtra, Uttar Pradesh and Bihar.
>
> In a number of cases it has been found that minors from West Bengal were transported to Haryana via Delhi to be sold for the sole purpose of marriage with men double their age, a recent case involving abduction of a 12-year-old girl from Jehangirpuri in North-West Delhi five years ago brought to light a crude reality – that the trafficked girls are being administered hormonal injections for hasty physical growth so that they could be pushed into the flesh trade quickly. The case also revealed that organised gangs of human traffickers were operating in Delhi.[3]

The root causes include extreme disparities of wealth, continuing and pervasive inequality due to class, caste and most importantly gender biases throughout the region, erosion of traditional family systems and values, iniquitous social conventions, lack of transparency in regulations governing labour migration (both domestic and cross border), poor enforcement of internationally agreed-upon human rights standards, and enormous profits ensured by the trafficking business to the traffickers.

Needless to say, the **conditions of work** in these contexts are extremely exploitative involve slavery like practices and prison like environments. The working hours are long with no time for rest or recreation. With low wages, employers often withhold the earnings of the women and thus they are rendered without any access to their own remuneration. The health risks and costs that women bear are hardly ever assessed in ways beneficial to them - the risk and high prevalence of HIV/AIDS, no access to reasonable and safe medical facilities, and no assessment of the impact of humiliation, isolation and social ostracism on their mental health.

4.1.1. Causes for Prostitution and Trafficking in India

There are several factors, which leads the women and children to be trafficked.

A. Poverty and Unemployment

This is the major reason, which makes the majority of women and children vulnerable - the sale of women and children and their dispossession through erosion of traditional livelihoods consequent on globalisation being major manifestations of poverty in trafficking realities.

B. Disasters and Conflict

Political unrest and natural disasters aggravate the vulnerability of women and children. Displacement

caused by these factors and poor rehabilitiation tend to push women into the spirals of trafficking for livelihood and survival.

C. Discrimination

Many women who opt out of an abusive situation at home or escape often find themselves vulnerable to prostitution, sex work and trafficking. Offering to marry without **dowry** and then pushing these women into prostitution has become a common method of trafficking in Uttar Pradesh, Bihar and other states. The social stigma associated with **single women** – divorced, unmarried, or widowed, and the exclusion of survivors of sexual abuse is a major contributing factor. With no support system to provide them security, they fall a prey to the traffickers. **Female Infanticide and Sex Selective Abortion** has resulted in interstate trafficking of girls in the name of marriage in some states like Punjab and Haryana.

D. Traditional Prostitution

In Bedia, Nat, Kanjar and other such communities, practices of traditional prostitution along with the dedication of girls to temples and goddesses in Maharashtra, Karnataka and Andhra provide easy channels into prostitution and trafficking.

E. Tourism

Development policies and patterns of development promoting TOURISM, has enhanced the demand for commercial sex and ensured a viable proposition for the traffickers, given the *economics of the trafficking business*, by providing them the market and the infrastructure to sell minors and women for Commercial Sexual Exploitation.

4.1.2. Rescue

Trafficking is a facet of migration. There is a great need for awareness generation at all levels and community policing to reduce the vulnerability of women and children and ensure safe migration. As it was planned under the commission special police officers needs to be designated to look into trafficking cases specifically under all police stations.

Rescue operation of minors, in prostitution or any kind of Commercial sexual exploitation or illegal purposes, is primarily the State's responsibility. NGOs however have done a much better job by themselves throughout the country. More rescues have to be handled professionally by the special police officers designated to look into trafficking cases.

Rescued children usually live in State Remand Homes and often are in a situation where their minimum Human Rights are denied. Red-tapism, slack investigation and long judicial processes leads to the children spending a majority of their childhood in an unhealthy situation of the Government Homes.

Children rescued from prostitution often go into "Post-traumatic Stress Disorder" which manifests into other behavioural disturbances, characteristic of children who have been subjected to prolonged and sustained violence. In addition they suffer from a loss of trust, lack of self-esteem due to isolation, which results in maladjustment in children. However, both the infrastructure and the personnel in the govt. remand homes are ill-equipped to handle and cater to the different requirements of these children.

Govt. remand homes have no infrastructure to deal with pre or post test counselling for **HIV positive minors and women** - they often do not have sensitised and trained counsellors /personnel and pre/post-test counselling centres. The state hospitals in most cases refuse to take HIV patients. If they ever do so their infrastructure is hardly enough to cope with the problem. Therefore when a girl gets to know that she is HIV positive she has to deal with the trauma on her own. That leads to dire consequences in some cases.



4.1.3. Rehabilitation

The rehabilitation that is being done for these rescued women and children are all results of NGOs' initiatives. But it has been observed that the rehabilitation is always difficult.

Restoration of the woman or the young girl in her native village without providing her the means to ensure her livelihood would only place the girl in a more vulnerable position and enhance the chances of her being re-trafficked.

Also in cases where the girl was trafficked with the consent of her parents, restoring her back to her family makes the girl susceptible to more exploitation and violence.

Though it gives restoration orders, the Govt. does not have any infrastructure in place to provide for women and girls who are not accepted back by their families. NGOs, however, on their own through various means are trying to reach out to these girls and create opportunities for their economic independence and a better life.

4.1.4. Legal Hurdles

A. Cumbersome and inefficient investigation

A victim may be detained in a remand home until and unless her case is resolved. But the accused (traffickers or madams) get bail immediately before or after 90 days. There is a lack of initiative in submission of charge sheet and conducting in depth investigation into the individual circumstances of victims by the police- often resulting in handing victims over to traffickers who in many cases may be adoptive parents as well. Most of the arrests that are done are done during the rescue operations and raids that are conducted by the Police. The trafficker is rarely present on the scene and rarely gets arrested. The **absence of Women's Police Stations** or women's cells in police stations, results in the immediate release of women traffickers.

B. No De Facto Protections for children

There are an inadequate number of Juvenile Courts and Juvenile officers in police stations. In April 2000, the **Juvenile Justice (Care and Protection) Act** was amended but not implemented. Thus the children are not benefiting from the Child Welfare Committee, or the National Plan of Action. We have **Child Marriage Restraint Act and Child Labour Abolition Act** - none of which are implemented. Under Section **366B IPC,** children are victims and not accused, but the police rarely abide by this section.

C. Repatriation

It is a fact that India is receiving girls from Bangladesh and Nepal for Commercial Sexual Exploitation. The foreign women and children who are trafficked face a number of problems. The unilateral application of Section 14 of the Foreigners' Act to all adults from Bangladesh **transforms all victims of trafficking into "Accused", for illegal immigration**. Women and children from Nepal are sent back to their points of origin where they become vulnerable once again. The **Pushback system** maximizes the vulnerability of women and children. This process always happens after 7.00 p.m. and in darkness. Many people involved get lost while trying to go back to their homes. They also face **sexual abuse** by people who are supposed to help them in this process. Moreover, they have a strong possibility of being re-trafficked. When an entire family sells their land and comes to India hoping to get a new life and gets arrested, the adults are sent to jail and children to remand homes. But even after the adults are released the younger children may still be at the home. Sometimes it has been observed that the victims of trafficking are detained at homes for years.

4.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

Article 23 of the Constitution prohibits traffic in human beings and forced labour. Apart from this guarantee,

there are various provisions in criminal law, both in the Indian Penal Code and in special legislations like the Immoral Traffic (Prevention) Act, 1956 (ITPA), amended in 1976 and 1986, that are aimed at preventing trafficking in persons. At the international level, India has been part of a series of deliberations aimed at tackling with radical measures, the problem of trafficking and prostitution.

- The Prevention of Immoral Trafficking and the Rehabilitation of Prostituted Person's Bill (1993) recognizes the rights of prostitutes and initiates the investigation in these matters.
- The Govt. of India has formulated a **National Plan of Action** to combat trafficking and commercial sexual exploitation of children and minors, in 1998.
- In the year 2003, the **State government of Andhra Pradesh** has passed a **Government order** to address the issue of trafficking. An Anti - trafficking campaign was organised across the state and it was decided to form Core committees at the district level comprising the District Magistrate, the Superintendent of Police, the Project Director (Dist. Agency of Women Development and Child Welfare) and representatives of NGOs to monitor the situation in the district, formulate and implement necessary initiatives to tackle the issue.
- **SWADHAR** programme has been introduced by the Govt. of India to combat trafficking of women and children. This scheme was the first to include the **prosecution** of trafficking and **repatriation** if possible and asserted on the **rehabilitation** of trafficked victims. Funds have been allocated to different NGOs in different states to work on the Swadhar project.
- **Short stay scheme** - the State Govt. has included counselling programme for the traumatized children.
- The Last SAARC Convention was held at Kathmandu where trafficking and child sexual exploitation were highlighted as a major problem.
- The Supreme Court Judgment of using video conference systems for witnesses of trafficking facilitated by PRAJWALA has saved the victim from the trouble of travelling a long distance on each date and more so to testify in an uninhibited manner.
- Sarva Shiksha Yojana, the "education for all" policy will be beneficial to these groups of vulnerable people.

4.3. RECOMMENDATIONS

- The Central and State Government needs to lay more stress on **employment and income generation** schemes for vulnerable families, along with vocational training and education in the source areas of trafficking (which have already been identified by the NGOs). Programmes like Support to Training and Employment Programme (STEP) needs to be started with immediate effect in the vulnerable areas of the country, especially the rural pockets. Ensure economic survival mechanisms of women in the rural areas.
- All States should have a **specific monitoring mechanism** - a task force/core committee to look into the issue of trafficking and NGOs should necessarily be a part of this Committee. It should be made mandatory for the Panchayats to maintain a record of the people migrating from their respective villages for different reasons - marriage, higher education, employment etc. By involving different personnel from the administration and governance structures as well as from the NGOs and by creating awareness amongst the community, a networking system should be put in place to monitor the movement in women and children. Investigation of missing children needs to be done in the source areas by the Panchayat, which is the nearest formal body, which can identify trafficking. Integrated Child Development Services personnnel (Anganwadi workers) should share with members of panchayat the



responsibility of identifying and lodging complaints on missing girls with the police. The procedural aspects of these actions need to be put in place urgently. A databank has to be created at the national and the state levels giving details about missing persons and trafficked persons.

- All the concerned government personnel need to be trained to implement and monitor the National Plan of Action, which includes the effective implementation of protective and punitive legislation. SAARC Convention should be translated in action and the Indian government needs to have bilateral agreements with other countries in order to facilitate safer repatriation processes.
- Juvenile Boards and Committees under the Juvenile Justice (Care and Protection) Act, 2000 need to be formed across all districts in each of the states in the country.
- More workingwomen's hostels and shelter homes should be established in districts all over the country with the vulnerable districts getting the top priority. Existing Government Homes should have proper shelter, medical and psychological support, skill training support for the rehabilitation of victims of trafficking.
- Counselling and vocational training centres should be increased for proper reintegration of the victims of trafficking. Pre test and Post test counselling (under WHO and NACO guidelines) of suspected HIV positive victims should be made mandatory in all Government and NGO Homes.
- Marriage registration should be made compulsory and specific responsibility of proper follow up should be given to a particular department. All customary marriage laws have to be amended to ensure uniform age of marriage. Women should not be retrenched because they marry. The right to family benefits to be assured to the women. Buying and selling of minors, fake marriages and forced prostitution (372, 373, 366A) should be heavily punished. Sometimes parents or nearest kin are involved in the crime and they should be punished too.
- Alternative opportunities for aged prostitutes should be introduced. It has been experienced, often that those who can no longer attract customers by themselves, in order to ensure their incomes, turn into traffickers or brothel madams. Thus those who had been the victims of violence become the perpetrators of exploitation. This vicious circle needs to be broken.
- More Swadhar projects should be given to NGOs. The procedures of funding for these projects should be expedited. Periodic monitoring and reviews should be religiously conducted and facilitating systems should be put in place. NGOs running Swadhar project should be empowered to work with the Government in carrying out rescue and rehabilitation operations of the victims of trafficking.
- There is a need to set up a Nodal Agency on the lines of 'Narcotics Bureau'.
- The Push back system should be abolished and new laws for repatriation need to be implemented so that the Bangladesh and Nepal Nationals (women and children) may go back to their country safely. Children should not be charged under 14 Foreigners Act. Instead, they could be produced before the Child Welfare Committee (CWC).
- There should be speedy recovery of cases: trafficking and all others. Fast track court has been established but we need separate court to deal with cases of trafficking. Members of the Judiciary should be sensitised on laws and various landmark judgments passed by the Supreme Court on the issue of trafficking. Positive interaction should be there while working with these cases with the NGOs.
- A Special Cell to deal with Trafficking Cases should be formed immediately.

- In all the states, special police officers have to be recruited and notified under ITPA. They must be trained and equipped with all the relevant information on laws and various landmark judgments passed by the Supreme Court on the issue of trafficking. They should also be more sensitive in handling cases of women and young girl children in trafficking.

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6. The Study was supported by Central Social Welfare Board (Government of India) in 1996
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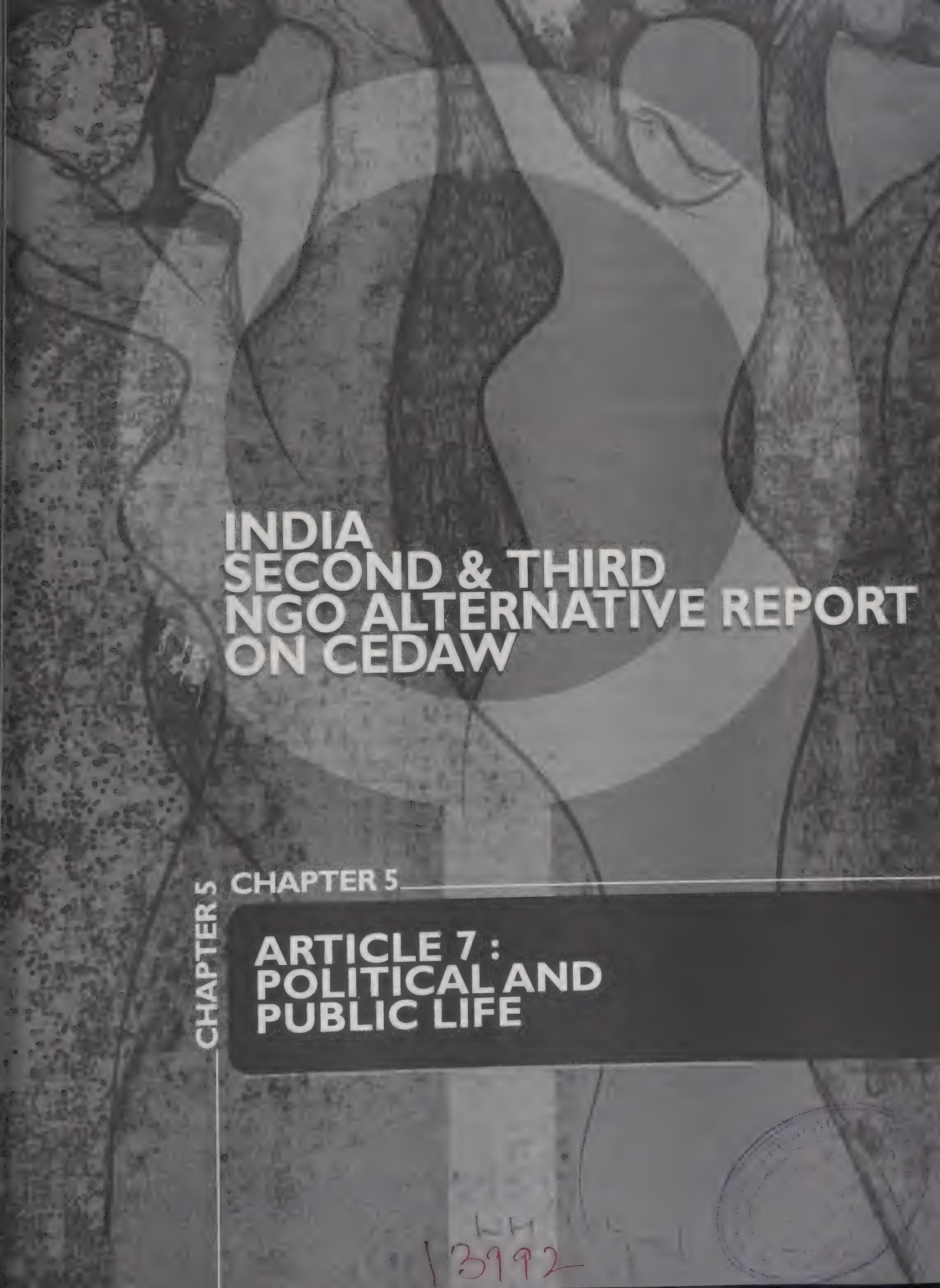
End Notes

[1] Like begging, forced domestic labour, organ transplant, camel jockey, etc.

[2] The Study was supported by Central Social Welfare Board (Government of India) in 1996

[3] Devesh Pandey, "'Missing Link' in Trafficking", *The Hindu*, October 02, 2004.





INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 5

CHAPTER 5

ARTICLE 7 : POLITICAL AND PUBLIC LIFE

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POLITICAL AND PUBLIC LIFE

5.1. PREVALENCE OF THE PROBLEM

5.1.1. Discrimination in Politics and Public Life

Discrimination against Women in the Political Process and Public Life needs to be examined with reference to political leadership, public employment with specific reference to the civil services and the judiciary. Representing the legislature, the executive and the judiciary, these are the three areas critical to governance and areas vested with the power to break down stereotypes and open up spaces of governance to women. Although as the Government Report states, "historical and cultural disadvantages coupled with several socio-economic obstacles faced by women impede their participation in decision-making," (para 182), the exclusion of women from the legislative, administrative and judicial processes cannot be put down to these stereotypes, because it is not women who are reluctant to step forward. Rather women who step forward find themselves blocked from these decision making spheres. These are the three arenas of political and public life in which the duty is on the state to ensure substantive equality for women.

A. Political Leadership

Immediately after the enactment of the 73rd and 74th Constitutional Amendments, 800,000 women entered the political process in rural and urban areas through the panchayat system and local bodies in 1993-94 through a single election.

In the State Legislatures and Parliament on the other hand the percentage of elected women representatives is very low. The percentage increase in women representatives in Parliament from the tenure of the First Parliament in 1950 is only 0.9 percent. Latest figures indicate that the proportion of women in the Lok Sabha [the Lower House of Parliament] in 2004 was 8.16 % (44 out of 539 elected members) and in the Rajya Sabha [the Upper House of Parliament] the percentage of women is 11.42 % (28 out of 245 members). The situation in the State Legislatures is not much better. According to the report of the Government of India, Delhi (12.86 percent) has the highest proportion of women members followed by Andhra Pradesh (9.52 percent) and Kerala (9.29 percent). Mizoram and Nagaland have no representation of woman while it is negligible in Manipur, Arunachal Pradesh, Gujarat, Jammu and Kashmir and Karnataka.

From the records available of the past 50 years, since independence, it is seen that the strength of women in the political field as reflected in State legislatures remained at an average of 3 percent to 5 percent of those elected. At the level of Parliament, the position of women members has varied between 5 and 8 percent. What is even more cause for concern is the sharp decline in the percentage of women who are successful in elections at the national level. While statistics show that there is an increase in women contesting elections at the national level from 51 seats in 1952 to 307 seats in 1991, the percentage of successful women candidates has gone down from 45 percent in 1952 to 10.75 percent in 1991. This is a clear indication that the problem does not lie in women's willingness to participate in politics.

The gross imbalance between women leaders in local bodies on the one hand and women in state legislatures on the other hand points to the fact that the responsibility for the "missing women" in politics cannot be completely accounted for by recourse to cultural stereotypes, but rather the responsibility lies in the abject failure of the state to create enabling conditions for women to enter the political field in any meaningful way. If it were true that stereotypes impede entry, we would not have 800,000 women entering the panchayat system and urban local bodies.

B. The Judiciary

The Indian Supreme Court has no sitting woman judge. The total number of women judges in the Supreme Court in the past 56 years has been 3 - Hon'ble Justice Fathima Beevi, Hon'ble Justice Sujatha Manohar and

Hon'ble Justice Ruma Pal. Addressing the "All-India Meeting of Chief Justices of High Courts on Women's Empowerment vis-à-vis Legislation and Judicial Decisions," organised by the National Commission for Women (NCW), December 10, 2004, Mr. Justice Lahoti, the then Chief Justice of India said that encouraging women into the judiciary and promoting them as judges was necessary, **though he could not do it officially**. Addressing the problem of gender discrimination in the Bar, which leads to their absence in the judiciary, he said, "Be on the look-out for brilliant women lawyers who have the potential for delivering good justice, though they may not have enough experience...The female members of the Bar may be encouraged in the profession, may be given assignments as Court Commissioners for inspections and recording statements of witnesses. Preference may be given to female lawyers in the matter of assigning legal aid work or *amicus curiae* briefs so that they have more and more effective appearances in courts,"[1]

There is an abysmally low representation of women in the judiciary in different jurisdictions - the proportion declining as one moved from district level, which presents the highest figures to High Court (25 out of 514, ie 4.86%) and then to the Supreme Court, which presents the lowest figures at 0. This needs to be viewed in light of the resilience of violence against women in every sector and the failure of women despite the existence of protective legislation to secure substantive justice.

C. The Executive

The number of women in the Indian Foreign Service is the highest, with 11.4 % in 1999, followed by the Indian Administrative Service where their numbers have increased from 512 (10.22%) in 1997 to 535 (10.42%) in 2000. The representation of women in the Indian Police Service remains extremely low at 3.83 per cent in 2002.

These figures again, especially the profile of the police force must be read against the failure of the criminal justice system to ensure a fair investigation in crimes of violence against women.

D. The Armed Forces

The Armed Forces present very low figures of recruitment of women. While this could in great measure reflect the choices women make, the low presence necessitates safeguards for the small number of women who are in the services. We have evidence of the complete lack of transparency and adherence to minimal standards of the rule of law, both with respect to the Military Nursing Service and the case of the Air Force discussed in Chapter 2 of this report.

5.1.2. Women in Politics

Women have entered politics at the national, state and district levels. It is useful to look at the issues elected women representatives face at these different levels and the ways in which they have addressed these issues. It is also possible then to formulate mechanisms through which these obstacles can be circumvented.

A. Women in Parliament

Elected women in the Indian Parliament are predominantly from educated, elite backgrounds with a history of political leadership in the family. None of the women in Parliament have been part of the movement for women's rights in the country. Once elected, there is a tendency to give women in ministerial positions "soft portfolios" and women are rarely found in leadership positions in their parties. In theory, most women MPs support the Women's Reservation Bill [although none of them have entered politics through quotas], but will not disobey the party whip to vote in favour of quotas. Women's issues are generally discussed in the "Ladies Room" in the Parliament. Clearly these women also do not wield enough authority in their parties to influence the party position on this issue. For women in politics without the backing of a political family, domestic responsibilities, lack of financial clout, rising criminalization of politics and the threat of



character assassination are making it increasingly difficult for women to be part of the political framework. Where women do contest an election, "women candidates are usually fielded from 'losing' constituencies where the party does not want to 'waste' a male candidate".[2] There is a complex process through which any effective advocacy on women's issues is disabled in political spaces at the national level.

B. Women in Local Self Government

"Assam is more than just tea gardens. We have problems of villages being washed away by floods and people being displaced. What we are hoping is to get these villages back on their feet and rehabilitate the villagers. My vision is to build a panchayat that is self-sufficient and does not depend on `government funds," Hem Kumari, a sarpanch from Assam.[3]

And hoping to create a new life and community for displaced people is Bhagwan Devi, from Bihar: "I am more popular than the `mukhiya' and do more work than him. The police are not allowed to enter my panchayat and most of the disputes are resolved at the panchayat level... I hope to provide a pucca house for everyone in my ward, health for all and also work towards eradicating poverty."[4]

Women in local self-government have had diverse experiences - all necessary for the development of political consciousness.

Some women have been put up as puppet candidates, have never visited their office and have signed or put a thumb impression where the village leader has ordered them to: "Our men come with the papers and we merely put our thumb impressions on them. We sit apart away covering our faces and feel shy saying anything..."[5]

There are several who have entered this way, but have undergone training by different agencies and taken charge. Women sarpanches who underwent training under the *gramsat* programme in Karnataka were taken to visit the state legislature - the Vidhan Soudha. Later, in meetings in their panchayats, this became the validation of their authority: "They often ended an argument, especially with men, with "What do you know? Have you seen the Vidhana Soudha? I have!"[6]

In Haryana, women sarpanches have struggled to get grazing lands back for the village, they have had liquor vends closed down, where school teachers have been recalcitrant, they have taken the matter up with the school principals, recognizing women's reproductive health needs, they have made sure that midwives are accessible at all times in the village - a concern which would rarely occur to a male sarpanch.[7]

5.1.3. Dalit and Adivasi Women Leaders in Panchayats

Women belonging to the Scheduled Castes and Scheduled tribes however, face enormous hurdles in the course of performance of work.

The widespread discrimination based on caste can take overt forms -where women are physically obstructed from performing their duties and assaulted if they persist - as was the case with Dubbaka Manjula in Andhra who was stripped and paraded in the village by dominant caste men; this discrimination can take covert forms where non dalit members of the panchayat abstain from meetings and do not let a quorum gather, thus rendering the panchayat ineffective.

In Madhya Pradesh, out of 22,029 gram Panchayats 7,384 are reserved for women, out of which 3,514 are for Dalits. But Dalit women Sarpanches have rarely been allowed into the decision making area. "They have the double disadvantage of caste and gender factors."[8]

But there is light...

"Woman Sarpanch Durga Devi, can be seen sweeping the streets of her village every day. Even after having been elected as a Sarpanch, she has not given up her traditional vocation. She says, "Why should I feel ashamed of my work? Had I given it up, people would have said that I have stopped it because I have become a leader". Durga is the Sarpanch of Sarbadi village in Sikar district. She is a 'mehtar' by caste. She believes

that untouchability is more prevalent in villages as compared to cities. Bansidhar Sharma, the deputy-Sarpanch is of the opinion that no one in his Panchayat has a problem working with a dalit Sarpanch. No scams have been reported during the two and a half-year term of Durga Devi. There have been no accusations of favoritism. Her dream is to ensure the overall development of her village."[9]

5.1.4. Initiatives by NGOS, Women's Organizations

The women's movement and a wide spread network of non government organizations which have strong grassroots presence and deep insight into women's concerns have contributed in inspiring initiatives for the empowerment of women. The mobilization of women during pre- Beijing period got consolidated in post Beijing, with the platform for action.

Identifying women leaders and providing training and exposure for capacity building has been one of the priorities at the grass roots level.

Women's groups have been engaged in creating public opinion and mobilizing women and supportive men to campaign for 1/3 reservation for women in the parliament and state assemblies. The National Alliance of Women (NAWO) spearheaded the campaign for Reservation Bill and also prepared a 'women's manifesto' which was presented to the political parties.

NGOs have played a signified role in initiating the process of gender sensitization at various levels.

5.2. CRITICAL AREAS OF CONCERN

- There is concrete data to prove that women cannot enter mainstream politics in significant numbers without affirmative action. This has more to do with discrimination against women than with women's inhibitions.
- Women in politics especially at the state and district levels find corruption, criminalization and communalization of politics impediments to their effective participation. This atmosphere also engenders violence against women contestants as a way of obstructing their entry into politics.

5.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

On 26 January 1950, the Constituent Assembly, which drafted the Indian Constitution, became the First Parliament of India, a provisional Parliament that stayed in place till the first general elections under the new Constitution in 1952. At its foundational moment, this first Indian Parliament had 15 women (including one dalit, one Muslim, and one Christian woman representative) out of 207 members, ie, 7.3 percent.

The Indian Constitution, in Articles 14 and 15, guarantees women the right to equality and the right against discrimination. Article 38 guaratees a just social order in which inequalities between individuals and groups is minimised. The 73rd and 74th Constitutional Amendments in India, which came into force on 20th April 1993 provided reservations for women, scheduled castes and scheduled tribes in panchayats in rural areas and local bodies in urban areas. Article 16 guarantees women the right to equality in public employment. There is a duty cast on the state by the constitution to ensure substantive equality through affirmative action in education, employment and politics.

5.4. RECOMMENDATIONS

- There must be a multi tiered reservation system that is put in place. Political parties must mandatorily field women candidates for one third of the seats they contest in each state. One third of seats in legislatures and both houses of parliament must be reserved for women. This reservation must be a vertical reservation that is binding on the reserved constituencies as well.
- Although a beginning has been made by the Election Commission with respect to Election expenditure,



there must be far reaching long term measures that are put into place.

- To enforce stringent ceiling of expenses incurred for election campaigns, provide financial support to women candidates particularly those who are from Dalit and marginalized communities.
- A National Judicial Services Commission must be set up immediately and one third of the judiciary in each state and the Supreme Court must be women. Retired women judges from the Supreme Court must be given an equal chance to head statutory bodies like the National Human Rights Commission. With affirmative action the norm in all sectors of public life, it must be made mandatory for the judiciary to reflect this norm.
- Active measures must be taken to make the civil services more representative.
- The Police and Armed Forces tend to present very hostile environments for women. Mandatory Procedures need to be specified with respect to offering women in the Armed Forces protection against discrimination. There is need for mainstreaming gender sensitization within the government system and propagating the same for an enabling environment for women's participation in political and public life.

Table 1: Participation of women in national elections

Election Year	Voting % of men	Voting % of women	Total seats contested by women	Seats won by women	% seats won of contested seats	Total seats	% of women members
1952	53.00	37.10	51	23	45.09	499	4.40
1957	56.00	38.77	70	27	38.57	500	5.40
1962	62.10	46.63	68	35	51.47	503	6.70
1967	66.70	55.48	66	31	48.43	523	5.90
1971	69.70	49.15	86	22	27.50	521	4.20
1977	65.62	54.96	70	19	25.70	544	3.40
1980	57.69	51.22	142	28	19.70	544	5.14
1984	63.61	68.17	421	159	28.30	544	7.90
1989	70.90	43.90	189	28	14.80	525	5.30
1991	52.56	47.42	307	33	10.75	503	6.60

Source: PIB, Government of India, 1998.

Endnotes

[1] *The Hindu*, 11 December 2004. Emphasis added.

[2] This section is based on Shirin Rai, *Class, Caste and Gender - Women in Parliament in India* International IDEA, 2002, Women in Parliament, Stockholm (http://www.idea.int) (This is an update of the case study which was originally published in International IDEA's Handbook: *Women in Parliament: Beyond Numbers*, Stockholm, International IDEA, 1998).

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[7] Rahul Das, "Women Sarpanches asserting their Authority," *The Tribune*, November 28, 2003.

[8] Deepak Tiwari "Electric Chair: Dalit Woman Sarpanches are Abused" *The Week* June 9, 2002. Winning article for the 2002 Sarojini Naidu Prize

[9] Mamta Jaitley Don't think of us as Puppets *Vividha Features*. Winning article for the 2002 Sarojini Naidu Prize.

Table2: State-wise Profile of Women in Elections to Parliament in 1998

State/UnionTerritory	Candidates	Winners
Uttar Pradesh	56	9
Madhya Pradesh	28	4
West Bengal	21	5
Bihar	21	4
Rajasthan	20	3
Maharashtra	20	2
Andhra Pradesh	18	2
Tamil Nadu	13	1
Delhi	10	2
Orissa	10	2
Kerala	10	1
Karnataka	10	0
Punjab	9	1
Gujarat	7	4
Haryana	6	1
Assam	3	1
Meghalaya	2	0
Chandigarh	2	0
Tripura	1	0
Goa	1	0
Jammu & Kashmir	1	0
Manipur	1	1
Daman & Diu	1	0
Aunachal Pradesh	0	0
Mizoram	0	0
Nagaland	0	0
Sikkim	0	0
Andaman & Nicobar	0	0
Dadra & Nagar Haveli	0	0
Lakshadeep	0	0
Pondicherry	0	0
Himachal Pradesh	0	0
Total	271	43

Source : Election Commission of India, 1998.

Table 3: Profile of Women in Government

At All Levels	Ministerial Levels	Sub Ministerial Levels
5.8 %	3.2 %	6.2 %

Source : Election Commission of India, 1998.



Table 4: Women in the Rajya Sabha (Upper House)

Year	Total	No. of Women	Percentage
1952	219	16	7.3
1957	237	18	7.6
1962	238	18	7.6
1967	240	20	8.3
1971	243	17	7.0
1977	244	25	10.2
1980	244	24	9.8
1985	244	28	11.4
1990	245	24	9.7
1991	245	38	15.5
1992	245	17	6.9
1994	245	20	8.1
1996	245	18	7.3
1997	245	18	7.3
1998	245	18	7.3

Source : Statistical Abstracts, 1998.

Table 5: Women's representation in selected state legislatures

State	Year	Total	Women
Assam	1996	122	6
Haryana	1999	90	4
J & K	1996	87	2
Himachal Pradesh	1998	68	6
Gujarat	1998	182	4
Kerala	1996	140	13
Meghalaya	1998	60	3
Punjab	1997	117	7
Pondicherry	1996	30	1
NCT Delhi	1998	70	9
Nagaland	1998	60	0
Madhya Pradesh	1998	320	26
Tamil Nadu	1996	234	9
Tripura	1998	60	2
Uttar Pradesh	1996	424	20
West Bengal	1996	294	20
Bihar	1999	324	19
Maharashtra	1995	288	11
Arunachal Pradesh	1995	60	1
Manipur	1999	60	1
Orissa	1999	147	13
Rajasthan	1998	200	14

Source : Election Commission of India

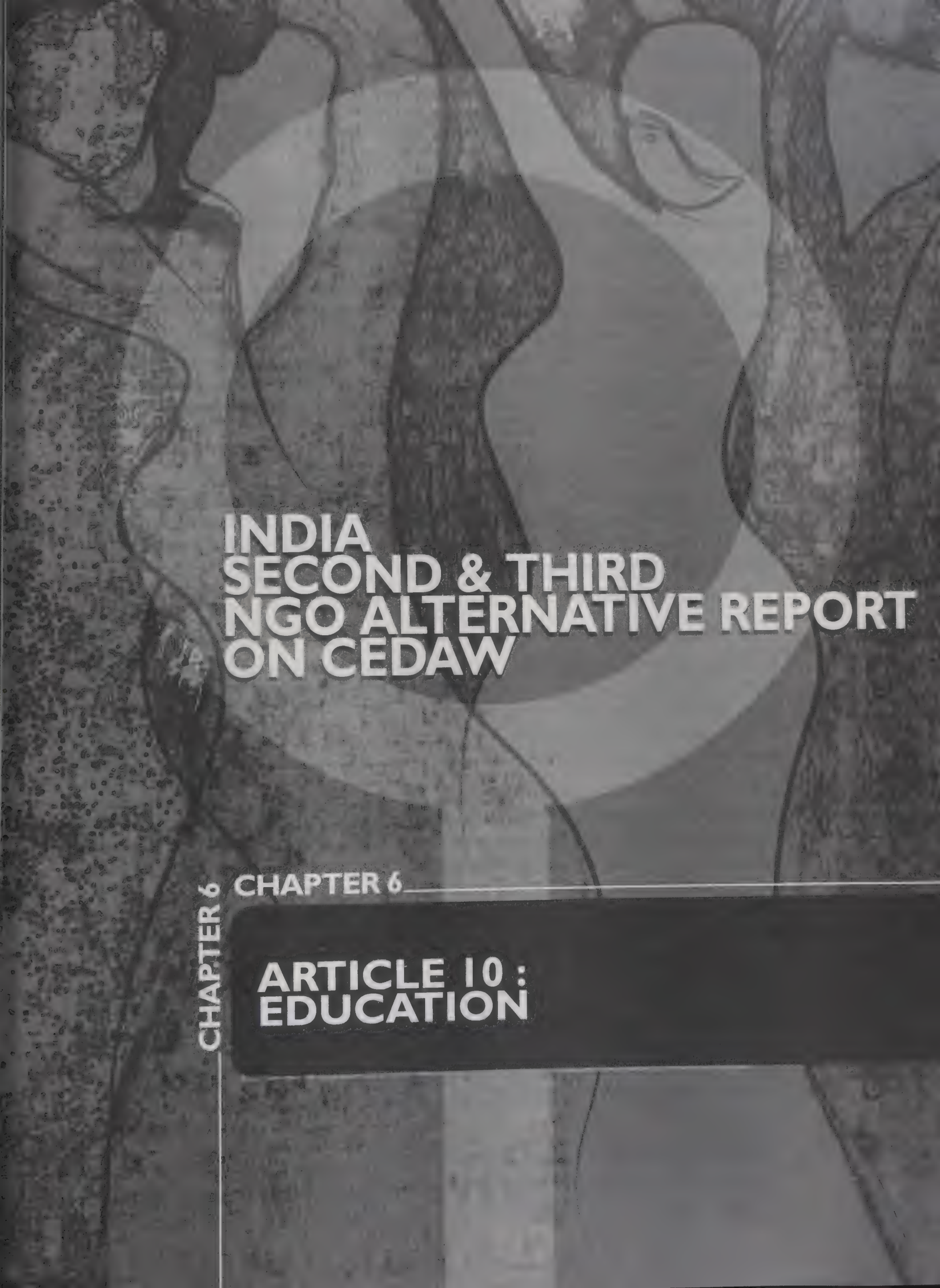
Table 6: Number of urban local bodies and local elected representatives

State/Union Territory	Municipal Corporation			Municipal Council			Nagar Panchayat			Total			
	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	Total
Andhra Pradesh	07	264	131	07	1902	951	15	210	104	116	2376	1186	**3542***
Assam	01	-	-	01	236	117	42	136	68	68	372	185	**557**
Bihar	06	-	-	06	-	-	93	-	-	169	-	-	-
Goa	-	-	-	-	104	51	-	-	-	13	104	51	**155**
Gujarat	06	312	156	06	1830	915	60	840	420	152	2982	1491	**4473**
Haryana	01	-	-	01	-	-	32	-	-	53	-	-	**1359**
Himachal Pradesh	01	17	8	01	122	61	29	148	73	49	287	142	**429**
Karnataka	06	274	136	06	2131	1065	89	904	451	214	3309	1652	**4961**
Kerala	05	199	99	05	1065	532	-	-	-	58	1264	631	**1895**
Madhya Pradesh	02	712	355	02	1685	842	283	3025	1512	409	5422	2709	**8131**
Maharashtra	15	945	472	15	3268	1633	-	-	-	243	4213	2105	**6318**
Manipur	-	-	-	-	-	-	20	-	-	27	-	-	-
Orissa	02	47	23	02	374	186	72	704	352	103	1125	561	**1686**
Punjab	03	-	-	03	-	-	34	-	-	134	-	-	**1699**
Rajasthan	03	-	-	03	-	-	169	-	-	183	-	-	**4412**
Tamil Nadu	06	320	160	06	2330	1164	611	6530	3264	719	9180	4588	**13768**
Tripura	-	-	-	-	-	-	12	-	-	13	-	-	-
Uttar Pradesh	11	561	280	11	3980	1990	444	3679	1839	681	8220	4109	**12329**
West Bengal	06	-	-	06	-	-	4	-	-	122	-	-	**2706**
A & N Islands	-	-	-	-	-	-	-	-	-	01	-	-	-
Chandigarh	01	-	-	01	-	-	-	-	-	01	-	-	-
Delhi	01	-	-	01	-	-	-	-	-	02	-	-	**134**
Pondicherry	-	-	-	-	-	-	-	-	-	05	-	-	-
Daman & Diu	-	-	-	-	-	-	-	-	-	02	-	-	-
Total	101*	3651	83	1430	19027	9501	2009	16176	8083	3540*	38854	19410	68554*

*the minor discrepancy in the total figure[20] is because of unavailability of data from some areas

Source: S.A. Palnitkar, Country Report on the State of Women in Urban Local Government, UNESCAP, 2001





INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 6

CHAPTER 6

ARTICLE 10 : EDUCATION



EDUCATION

6. 1. PREVALENCE OF THE PROBLEM

The following section provides a brief description of the ground level situation in certain key areas.

6.1.1. Early Childhood Care and Education (ECCE)

Even though the positive linkages between ECCE and the empowerment of women and improving girls' participation in schooling are well established, ECCE receives inadequate attention.

A. Inadequate coverage

The Government of India's flagship programme - Integrated Child Development Services (ICDS)- provides supplementary nutrition (for children and pregnant and lactating women), immunization, health check-ups, referral services, nutrition education and pre-school activities for 0-6 age group. The programme is important because it targets poor children, many of whom are girls. However it has several problems with regard to coverage and programme quality. The total number of ICDS centres required for universal **coverage is 17 lakhs, as against the existing 6 lakhs.** [1] Moreover, the coverage is **uneven across different regions.** For example, the coverage in Bihar and Uttar Pradesh is less than 10%.[2]

B. Poor quality of preschool education

Several studies point out that the **quality of the educational component of ICDS is poor.** The training of Anganwadi workers (who manage the centres) for the educational component is also weak. Poor quality has serious implications in terms of retention, socialization processes and school performance of girls, particularly from poor and socially disadvantaged communities.

6.1. 2. Elementary Education

A. Important schemes to increase access

Elementary education has emerged as the key policy and programmatic concern of the Indian Government. A large-umbrella programme - the **Sarv Shiksha Abhiyan (SSA) or Education for All** with very ambitious goals was launched in 2001.[3] Specific programmes within SSA (National Programme for Education of Girls at Elementary Level (NPEGEL) and Kasturba Gandhi Balika Vidyalaya) focus exclusively on girls in educationally backward districts. Many of these SSA goalposts are already being shifted.

Another landmark scheme - commonly called the **Midday Meal Programme**- has been introduced after the Supreme Court in response to a public interest litigation filed in 2001 by the People's Union of Civil Liberties (Rajasthan) ordered all state governments to introduce cooked meals in schools. The scheme has been **welcomed as it positively impacts nutritional levels and school participation of children belonging to poor and marginalized sections.** There are reports of problems - **logistical problems of organizing the cooking** (and allegations that it cuts into teaching time), **poor quality of food being served, corruption, and caste based discrimination.** The programme requires to be **closely monitored to ensure its success.**

B. Issues related to enrolment and retention

The government from the 90's has **focused on improving enrolment at the primary level.** There has been a 14.18 percent increase in the number of primary schools, 50.65% increase in the number of upper primary schools and 38.43% increase in the number of secondary schools between 1993 and 2003 (NCERT, 6th and 7th Educational Survey). Measures have resulted in **improved enrolment rates**- from 97.4 million (40.40 girls, 57 boys) in 1990-91 to 122.40 million (57.3 girls and 65.1 boys) in 2002-03 (Select Educational Statistics, 2003).

C. Despite the improvements several gaps persist.

- **The Gross Enrolment Ratio (GER) of girls dropped sharply** from 93.07 at primary level to 56.22 at middle school (classes VI to VIII) in 2002-03. In rural areas is dropped even further to 47.35.

- **The situation of girls (and boys) of Schedule Castes (SC) and Schedule Tribes (ST) communities is far worse than the general category.** GER for SC students is 95.61 (89.35 girls) at the primary level and 56.28 (48.64 girls) at the middle school level. GER for ST students is 98.67 (92.25 girls) at the primary level and 48.19 (40.78 girls) at the middle school level. (Select Education Statistics, GOI 2003).

- While the gender gap has narrowed **dropout rates are unacceptably high, especially for girls of SC and ST communities.** In 2003-04 the dropout rate at the elementary level for all girls was 52.9 while the corresponding rates for SC and ST girls were 36.2 and 48.7 respectively. At the secondary level the rates are as 64.92 (all girls), 75.5 (SC girls) and 81.2 (ST girls).

- **There are sharp inter-state and regional differences as well.** There were as many girls outside school as there are inside in the 6-14 age group and not even **4 out of 10** girls in Uttar Pradesh in the 6-14 age group are in primary schools.[4]

- Recent studies indicate that educational situation of Muslim children, especially **girls and those belonging to 'lower' castes, are worse than SC/STs.**[5] Whereas the aggregate figure for enrolment of Muslim children is 50.7 per cent as compared to 67.3 per cent for SC and ST 59.8 per cent, the enrolment for lower caste Muslim children falls to as low as 36 per cent. The lower caste Muslim children also record the highest percentage (32.6%) in the "never enrolled category". While over 70 per cent ST and 55 per cent SC girls among those enrolled attend school regularly, this figure falls off to around 35 per cent for Muslim girls. Over 1 in 3 lower caste Muslims girls never go to school. (SRI Report, 2005). **However, reliable estimates of the educational status of Muslim girls are not readily available.**

6.1.3. Adolescent Girls Education

It is clear from the section above that girls fall out of the education net as they move up from the primary level. The availability of upper-primary and secondary schools are still not within easy walking distance and as they are fewer in number, are invariably overcrowded and frequent dropouts results. Therefore the **move to extend the SSA scheme to the secondary level should be urgently considered.**

A. Limited frameworks

Adolescence as a category with specific needs (they either get subsumed within the category of children or are seen as adults) is gradually getting greater attention. The Approach Paper for youth/ adolescents for the Tenth Five Year Plan stresses this but focuses on awareness building around issues of safe motherhood and population related issues. The focus on reproductive health and related issues reflects an instrumentalist approach to adolescent girls, and does not really look at adolescents within the framework of citizenship or a subject of rights.

Outside the school system, educational opportunities for adolescent girls are provided through innovative programmes like the Mahila Samakhya Programme, Lok Jumbish in Rajasthan and by NGOs. Many of the NFE efforts for adolescents have been successful in understanding the needs of adolescents; designing innovative programmes and developing contextualized curricula. However, these efforts are often limited in outreach and the **lessons learnt from these different programmes have not been mainstreamed.**

6.1. 4. Women's Literacy and Education

The 2001 Census recorded a **significant increase in literacy rates** (from 52 % in 1991 to 65 % in 2001), particularly female literacy rates, which increased by 14.8 % in 2001 as compared to 11.7 % in 1991). For the first time the absolute numbers of illiterates declined.[6]



A. Literacy Gaps

However, despite the literacy gains, **disparities in terms of gender, other social categories (like schedule caste and tribes), rural/urban situation continue to be glaring.**

- The gap between male (**75. 8 %**) and female (**54.1%**) literacy rates is **22 %.**
- In 2001, illiterates numbered close to **296 million** of which **190 million** were *women*. **34.6% of the worlds non-literate population** resided in India in 2003-04.
- The female literacy rate is **below 50% in 253 districts.**
- In 2001, the gender gap in the literacy rate for SC was 19 % (male and female were 66% and 47.1% respectively) and for 24 % for STs (male and female literacy rates were 59.2 % and 34.8 % respectively).

The Status of Muslim Women's literacy ... A Big Divide

The 2001 Census for the first time gives detailed educational data across religious groups. And the picture reveals a huge gap between Muslims and non-Muslims across the board.

- The literacy rate for Muslims is **59%.** (6% below the national average of 65%) and for Muslim women 50%.
- The all India literacy levels (as a % of their population) shows that **40.6% of the country's 67 million Muslim females were literate versus 46% of India's 430 million non-Muslim women.**
- It is important to note that the **urban difference is more marked.** The literacy rate of Urban Muslim women is 52.8% where as for the non-Muslim women is 65.5%.
- At a basic level of being literate Muslim women were **11% worse off than non-Muslims. The difference widened to 19% at the middle school level, 35 % at Class X; 45 % at Class XII and 63% for graduates and above.**

The data emerging calls for an urgent refocusing of policies and programmes to redress the situation.

B. Lack of political commitment

The momentum generated around literacy till the mid- 90's was impressive and resulted in improvements in literacy rates. Despite this and the fact that the Literacy Campaigns mobilized large numbers of women, the **political commitment to adult literacy and education has reduced drastically**. The **National Literacy Mission is now largely ineffective and literacy programmes under-resourced**. For the most part the **Continuing Education programme has failed to take off** leading to women relapsing into illiteracy. It is very likely that India will not be able to meet the EFA and MDG goals pertaining to literacy (as was pointed out in the Unesco Global Monitoring Report 2006). The present lacklustre situation means that **critical literacy inputs that are required to sustain processes empowerment of women's collectives, including self-help groups are not being provided.** [7]

C. Education for women's empowerment - Mahila Samakhya

Mahila Samakhya, (Education for Women's Equality), an effective process-oriented women's education and empowerment programme targeting poor, socially disadvantaged women is now operational in 9 states. The programmes women's collectives address several gender issues, including violence against women. It runs a number of innovative non-formal education programmes women and adolescent girls. **The innovative approaches adopted by MS need to be mainstreamed.**

D. Disparities in Higher education

With regard to higher education the percentage of women accessing higher education and professional courses is very low. Moreover, the differentials with regard to disadvantaged communities are very pronounced.

For example, % of women pursuing -

- **BA courses** - 3.39 % (Schedule caste), 1.38% (Schedule tribe), 40 % (non-dalit women).
- At the levels of Graduation and above Muslim women are 48 % worse-off compared to Muslim men and 33% worse-off than Non-Muslim Women.
- **science courses** - 2.8 % (dalit women), 0.58% (Schedule tribe), 34 % (non-dalit women).
- **post-graduate and doctoral levels**. 38% (MA) and 34% (MSc) for non-dalit women, the percentages for dalit women are 3.8% and 2.9%. For ST women the figure is even lower - 1.3% and 0.48% respectively.
- In **professional fields** like medicine 2.9 % dalit women and 1.1% ST women compared to 34 % non-dalit women. In BEd courses, the figure for dalit women is 4.4 % and ST women 1.4 % and non-dalit women is 40 %.[8]

6.1. 5. Content and Quality of Education

A. Issues of gender and representation

Though the content of education and classroom pedagogy are critical to altering gender and other social relations it has not been paid the attention it deserves. Efforts to make curricula gender-sensitive have been undertaken but can be considered initial attempts as they have remained largely at the level of removing stereotypes or increasing visibility and not have looked at gender in terms of social relations. Problems related to the representation of marginalized communities continue to exist and contribute to the deep sense of alienation of these communities from the mainstream education system and a reason for children dropping out. Sexuality is addressed in a problematic manner in educational materials. It is either related to population or reproductive health or seen as a problem associated with promiscuity and shame.

B. Classroom practices and teacher training

Classrooms need to be transformed into spaces that can help girls think critically. Discriminatory practices based on identity based prejudices need to be monitored and stopped. Corporal punishment, which is wide spread, needs to be checked. The role of the teacher is naturally crucial in this context. The present strategy of gender orientation sessions has proved to be ad hoc and ineffective. There is a need to incorporate gender and social equity concerns within the regular in-service and pre-service curriculum teachers.

C. Politicization of Curricula and textbook development processes

The debates and counter-debates that have ensued since National Curriculum Framework (2000)[9] have led to curriculum development and textbook writing becoming highly political and contentious. Steps have been taken by the Congress led UPA government since it came to power in May 2004 to alter the situation and a new curriculum framework has been drafted through a consultative process. The NCERT has recently embarked on a process to produce new textbooks with civil society involvement. It is important to ensure that adequate steps are taken to prevent education from becoming a battleground for scoring political points.

6.1.6. Violence Against Women and Education

A. Sexual Harassment in Educational Institutions

Sexual harassment and violence against girls and young women within educational institutions is widespread but under-reported. There is however no data (or systematic mechanisms to gather data) that indicate the extent of the problem. The Supreme Court Guidelines (Vishakha vs. State of Rajasthan) on Sexual Harassment in the Workplace makes it mandatory for universities and educational institutions to formulate guidelines and set up committees to deal with sexual harassment complaints. While many universities have formulated guidelines and established mechanisms to deal with sexual harassment many educational institutions still do



not have policies. Women's organizations and forums working with the guidelines have encountered several problems. For example, setting up of genuinely gender-sensitive non-partisan committees is difficult, often no action is taken against the accused, the petitioner is often harassed, lack of commitment to creating awareness about SH on campuses. Measures to make educational institutions safer for girls and women often leads to greater policing and restrictions on their mobility and sexuality. **Though technically the guidelines should cover schools no efforts have been made to implement the guidelines in schools, where sexual harassment is fairly common but is rarely reported.** One only has the media to rely on for such information.

B. Impact of conflict and communal violence on education

Violence and conflict on severely impacts opportunities for girls and women's education (communal violence in the case of Gujarat and prolonged conflict situations like the North East and Kashmir).

Communal violence, like the targeted violence against the Muslim community in the state of Gujarat between February 28 and March 2, 2002[10] and the subsequent lack of redressal and other forms of continuing discrimination have had far reaching consequences, both immediate and long-term, on education in general, and girls and women's education in particular. The situation even four years later is very volatile. In such contexts girls are kept away from schools making their educational experience irregular and precarious. There has been **large-scale displacement** within the affected Muslim community. Several families have not been able to return to their original homes and are now living in resettlement colonies. Most of these colonies, usually outside the main town, **lack basic facilities and accessing schools is a problem.** Many of the riot-affected are living lives of migrants, shuttling between their original homes and the resettlement colony. There is little regularity in the lives of children and very little parental supervision or support is possible. Economic insecurity still persists and education, especially of girls has been a casualty. Ghettoisation, even in education, leads to further distance and mistrust between communities.

In parts of India, like the North East and Kashmir, that have been experiencing violence for several years the ground level situation reveals that **prolonged violence has negatively impacted the education systems there and the education opportunities for women and girls in various ways. Dropout rate of girls** in areas experiencing conflict **is high** because of fear, extreme insecurity, restricted mobility, displacement, migration or economic compulsions. **Schooling** is an **irregular experience**[11] **and its quality is poor**. In such areas migration of teachers is also a problem. In several instances both in the North East and in Kashmir, people have been forced to live in relief camps, often for several years. The facilities at such camps are very basic and educational facilities are often non-existent. In areas experiencing prolonged conflict, employment opportunities are limited and livelihood options often destroyed. People's abilities to spend on education are reduced and it becomes a low priority. This trend is detrimental to women and girls, as parents prefer to invest on their son's education. School participation and quality of education for girls is impacted by **measures to control women's sexuality and mobility, like diktats imposing a dress code**, by religious bodies, militants or separatist groups are not uncommon. The failure to abide by these is often met with violent reprisals like acid attacks, physical assault, threats etc. There is an increased segregation of female and male students. There are alarming **increases in panic disorders** arising out stress and trauma among young school and college going women in the group of 14-18 years.

No systematic efforts have been made to understand and monitor the impact of conflict on education, especially women and girls. There are no policy guidelines on how to respond to the impact of violence and conflict. There are no mandated special provisions to deal with the particular problems arising out of such situations. Education provisioning from gender perspective, should find a place in any policy on internal displacement and relief and rehabilitation that are formulated.

6.2. CRITICAL AREAS OF CONCERN

A. Inadequate budgetary allocation

The budgetary allocation for education has hardly increased (from 3.49% 1997-98 to 3.97% in 2002-03) over the past five years and is still **way below the 6% of GDP commitment.** Within the overall education budget the greatest priority has been given to elementary education (1.93% in 2002-03) and the least to adult education (0.02%).[12] This low allocation to the sector whose main target group is poor, rural, socially disadvantaged women raises concerns. Women's studies is also under-budgeted and resourced.

B. Fund flows and utilization

Delays in fund release are frequently reported and weaken programmes. An uninterrupted and assured flow of funds is critical for the success of programmes. One of the major problems of the post TLC phase has been delay in the release of funds from the NLM. Several districts that had run successful campaigns have suffered due to this.

Low utilitization, which reflects low capacities to use funds, is also a problem. The launching of ambitious schemes and innovative programmes is however not matched by corresponding capacity building efforts to absorb funds. Low utilization is later used to justify budget cuts.

There is need for greater transparency in fund utilization. Recent reports of the SSA indicate that funds are often used for purposes other than what they were allocated for. The UPA Government has introduced an education cess however there is no information on how the funds for the education cess are being utilized. The concept of gender budgeting has been introduced by the Ministry of Women and Child but needs to be operationalised and strengthened within different departments. At present the links between policy level situational analyses and the interventions and budgets being proposed are not always clear. Systematic tracking of funds allocated to girls and women's education - both at the expenditure and programme level needs to introduced.

C. Withdrawal of the State in all sectors of education

As globalization has got more entrenched there are clear indications that the Indian State is withdrawing from the education sector. Privatization in all sectors (primary, secondary and higher) of education is taking place at a rapid pace. Reports indicate that this trend negatively impacts women, and the poor and socially disadvantaged sections. In the elementary education sector there is growing evidence that it is girls, and children from poor and socially disadvantaged communities who are accessing government schools (which are believed to be of poor quality) while boys, especially those belonging to richer and upper-caste sections are moving to private schools.[13] Moreover, in several states the policy thrust has been towards downsizing the formal stream through the introduction of various non-formal education schemes (like the Education Guarantee Scheme) that are implemented through para-teachers who are less qualified, less trained and hired on a temporary basis. [14] Initiated to provide access to those outside the ambit of education, such schemes are however institutionalizing a hierarchical 'double track approach' within the education system.

The thrust towards privatization is quite direct in the case of higher education.[15]

Privatization has meant that market-oriented subjects are increasingly being made available while Social Sciences and Women's Studies are being marginalized.[16] Charging fees at market prices has resulted in a fee structure that makes higher education unaffordable to a vast majority of the population. Given that the practice of dowry is still widespread, high investments in girls' education will be seen as 'negative dowry' resulting in the decline in the enrolment of girls in higher education, which is already low. While private players are entering the education sector rapidly there are hardly any quality control checks or affirmative action policies in place. All these are cause for concern.



D. Limits of the universalization of elementary education mantra

The 86th Constitutional Amendment came into force after a long campaign by civil society organizations. While it has generally been welcomed, the amendment has been critiqued for excluding the under six-age group. By this action the State has rolled back on the constitutional commitment as stated in Article 45 of the Directive Principle, which clearly states free and compulsory education *upto* the age of 14. **A pressing concern is that four years later, the Amendment is yet to be made operational. No resource allocations have been made.** The draft Bill initially circulated was withdrawn after criticism from several quarters. The Centre has now sent a draft Bill to the States, asking the states to take action. **No timeframe has been set.**

The overwhelming thrust of policy efforts has been on universalizing elementary education. **As a result other sectors like pre-primary (0-6 age group), adolescents and adults have been neglected.** While undoubtedly primary and elementary education are critical, the fact that retention rates in school are still low and that non-literate adults still constitute 40% of the adult population, and a majority of them are poor women, this sector cannot afford to be neglected. Moreover, each of these sectors has specific concerns that require addressing. If education is to lead to women's empowerment it is critical to look at issues pertaining to gender and education holistically as there are several continuities and interlinkages between the needs and barriers faced by girls and women at different points in their life cycle.

The rhetoric of universalization tends to prioritize issues of access over quality, even though the poor quality of education provided in schools and various discriminatory classroom practices are important reasons for children dropping out.[17] By and large the discourse on gender has not moved beyond formal notions of parity (enrolment, dropout etc.).

E. Tokenistic approach to addressing problems of marginalised communities

The gender differentials in terms of access and participation, especially with regard to socially disadvantaged groups are marked across all the education sectors. The language of universalization has led to 'targeting' different marginalized groups (which often reads like a long checklist) though their needs are not addressed in a substantive manner, in terms of systemic or curricula reforms. For example, children from marginalized groups (like children with disabilities, migrant children, children of sex workers or those affected by HIV[18]) do not enjoy equal access to educational institutions and when they are able to enter schools they are discriminated against. The issue of disabilities either gets left out from policy discussions or is addressed in a tokenistic manner. The concerns of SC/ST are clubbed together in most education policy documents though the realities and problems of these communities are very different. Similarly, though the 'educational backwardness' of Muslim community is lamented there are no specific programmes or measures to address their needs within the mainstream system programmes.

F. Fragmented policy and institutional framework

The policy and institutional framework is often fragmented which impacts programme effectiveness. For example, the Ministry of Women and Child Development administers the ICDS programme with no links to the education department, though the ICDS programme has an education component. The Approach Paper for Adolescents (Tenth Plan) calls for convergence between Ministries like Social Justice and Health and not the Education department. Even if convergence is advocated in the programme design or at the policy level it is not operationalised.

6.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

Education is a subject on the Concurrent list of the Indian Constitution - that is both the Centre and State can make laws and policies pertaining to Education. Cultural and educational rights of minority groups are ensured through the right of minorities to establish educational institutions articulated in the Fundamental

Rights. The Right to Equality can also secure education rights.

The 86th Constitutional Amendment Act, 2002 makes free and compulsory education a justiciable Fundamental Right for all children in the 6-14 age group.

6.4. RECOMMENDATIONS

i. Notwithstanding the importance of elementary education and keeping in mind the role of education in bringing about and strengthening women's empowerment the **educational policy framework and programme emphasis should be holistic and the specific educational requirements of each sector should be addressed and backed by resources.**

ii. **Given the negative impact of privatization on women and girls and socially disadvantaged sections in all sectors the State should arrest its withdrawal from the education sector.** The formal education structure should be strengthened and not downsized. Greater resources for Higher Education and Women's Studies should be committed. Greater quality control mechanisms of private educational institutions should be put in place.

iii. ICDS should be **institutionalized and universalized.** The **education component of the ICDS programme must be strengthened** and adequate training provided to anganwadi workers. There should be convergence between the Department of Women and Child (under which is the ICDS programme) and the Department of Education.

iv. **Specific programming and systemic changes** should be brought about to address the needs of socially disadvantaged groups that have clearly not been reached by education policies and programmes so far. **Educational data should be gender disaggregated but should also collected in terms of other social groupings.** Systematic mapping of social groups should be undertaken and programmes designed accordingly.

v. In order to **improve the educational status of Muslim Girls and Women and to bring them into the mainstream, policy measures and specific programmes backed by resource allocation needs to be put in place.**

vi. Given the important role it plays in sustaining women's empowerment, women's collectives (including self-help groups) and its criticality in reaching EFA targets the **commitment to adult literacy and education should be re-articulated and backed by adequate resources.** The National Literacy Mission should be adequately resourced and revitalised. The CE programme should be revamped and innovative programmes designed with the participation of women's groups and other civil society organizations. Lessons from the Mahila Samakhya Programme should be taken on board.

vii. Adolescents must be recognized as a distinct group with specific requirement and not subsumed within Elementary Education and Adult Literacy. While recognizing the importance of these issues, the **policy and programme framework needs to be expanded beyond reproductive and sexual health and population issues to include issues of rights and citizenship.** Lessons learnt from innovative programmes need to be mainstreamed into the formal system of education, literacy programmes and other national level programmes.

viii. To increase enrolment of girls (with a special emphasis on socially disadvantaged groups) there is an urgent need to expand the outreach of upper primary and secondary schools. **The SSA programme needs to be extended to the Secondary level. The number of women teachers, especially from marginalized communities needs to be increased.**

ix. Textbook reform processes with the involvement of academics and practitioners should be undertaken. **Gender needs to be looked at not as an add-on but integrated in all subjects and should be an important organizing principle of national and state curricula and textbooks.** Issues of sexuality needs to be addressed to provide children with information, enable them to make informed choices, make them aware of the



diversity of expressions of sexuality and gender and to equip them to deal with violations. **A new curriculum for the accelerated learning programmes needs to be developed.**

x. Curriculum for Teacher training and training of student teachers (DIETS) should include a substantive module on gender issues. Gender should become a subject within the regular in and pre service training programmes.

xi. Mechanisms to monitor the quality of classroom interactions and teaching-learning interactions, like classroom protocols should be put in place.

xii. Women of schedule caste (SC), tribes (ST) and Muslims categories have less access to higher education. The present efforts should be reviewed and a comprehensive strategy formulated to increase the participation of these groups in higher and professional education.

xiii. **Guidelines for sexual harassment at all levels of educational institutions including schools (upper primary upwards should be put in place) and monitored. Teachers training programmes should include awareness on sexual and other forms of violence against girls and women.** The issue should be sensitively covered in the school curriculum. Educational institutions should be made responsible for spreading awareness about these issues.

xiv. At present there are **no policy measures in place that addresses the particular educational needs emerging from different situations of conflict.** Specific programmes and policy guidelines to address these concerns should be designed specifically to restore confidence, address feelings of fear and insecurity and alienation from the mainstream specifically keeping in mind the needs of women and girls in such situations.

xv. An assessment should be made of present educational situation of the children, especially girls affected during the communal violence in Gujarat and appropriate measures adopted. Educational facilities in the newly formed resettlement colonies should be provided. Educational and skill building needs of the riot affect women should be ascertained and appropriate programmes designed.

End Notes

[1] Figures based on notes of deliberation of the National Adivsory Council, August 28, 2004.

[2] Developments since Dakar, India Country paper, Ministry of Human Resources Development, August 2001.

[3] The programme has ambitious goals - coverage of 192 million children in 1.1 million habitats across the country; ensuring all children to complete 5 of primary school by 2007 and 8 years of schooling by 2010; bridging all gender and social gaps of primary stage by 2007 and elementary stage by 2010; universal retention by 2010; involvement of local governance structures and civil society organizations.

[4] *India Education Report*, Ed. R Govida, NIEPA, 2000.

[5] Jyotsna Jha and Dhir Jhingran: Elementary Education for the Poorest and Other Deprived Groups - the Real Challenge of Universalisation, Manohar, New Delhi 2005

[6] The quality of the literacy data is not considered to be reliable. Census figures are based on self-reporting, usually by the head of the household and the data from the literacy campaigns (which have focussed on declaring districts 100% literate) have been critiqued for being unreliable as reports from the ground suggest otherwise.

[7] A recent study conducted by Nirantar, examining the linkages between literacy, leadership and capacity building within self-help groups found a high-correlation between literacy levels and leadership opportunities. And since socio-economic status and education are correlated leadership tends to get concentrated in the hands of the better-off members. Most of the capacity building inputs have been availed by members with literacy skills.

[8] Selected Educational Statistics 1999-2000, Ministry of Human Resources Development, GOI.

[9] NCF (2000) was produced by the NCERT and introduced by the Bharatiya Janata Party led NDA government (which was in power between 1999 and 2004) was a blatant attempt at promoting a right-wing Hindu nationalist perspective. Textbooks written from this perspective, in for example Gujarat, has contributed over the years to the development of culture of

divisiveness between communities amongst school children, as was evidenced during the communal violence in March 2002. From a gender perspective, the NCF 2000 was problematic because it sought highlight stereotypic distinctions between the roles of boys and girls and by located education within a tradition-bound religious framework that makes girls vulnerable to culturally and religiously sanctioned prejudices.

[10] Details of the Gujarat carnage and its impact are provided in separate section in Shadow Report and in a previous submission to the Committee.

[11] Schools often close down because of strikes, demonstrations, imposition of curfew, militant attacks and tension with the security forces. Often school buildings and other educational institutions are taken over resulting in discontinuation of classes. Disruptions have meant that examinations are not held, the syllabus is not completed.

[12] Selected Educational Statistics 2002-03.

[13] Gender and Social Equity in Primary Education. Study coordinated by Vimla Ramchandran.

[14] While para-teachers are being hired in large numbers in these states there has been a moratorium on hiring primary school teachers in Government schools.

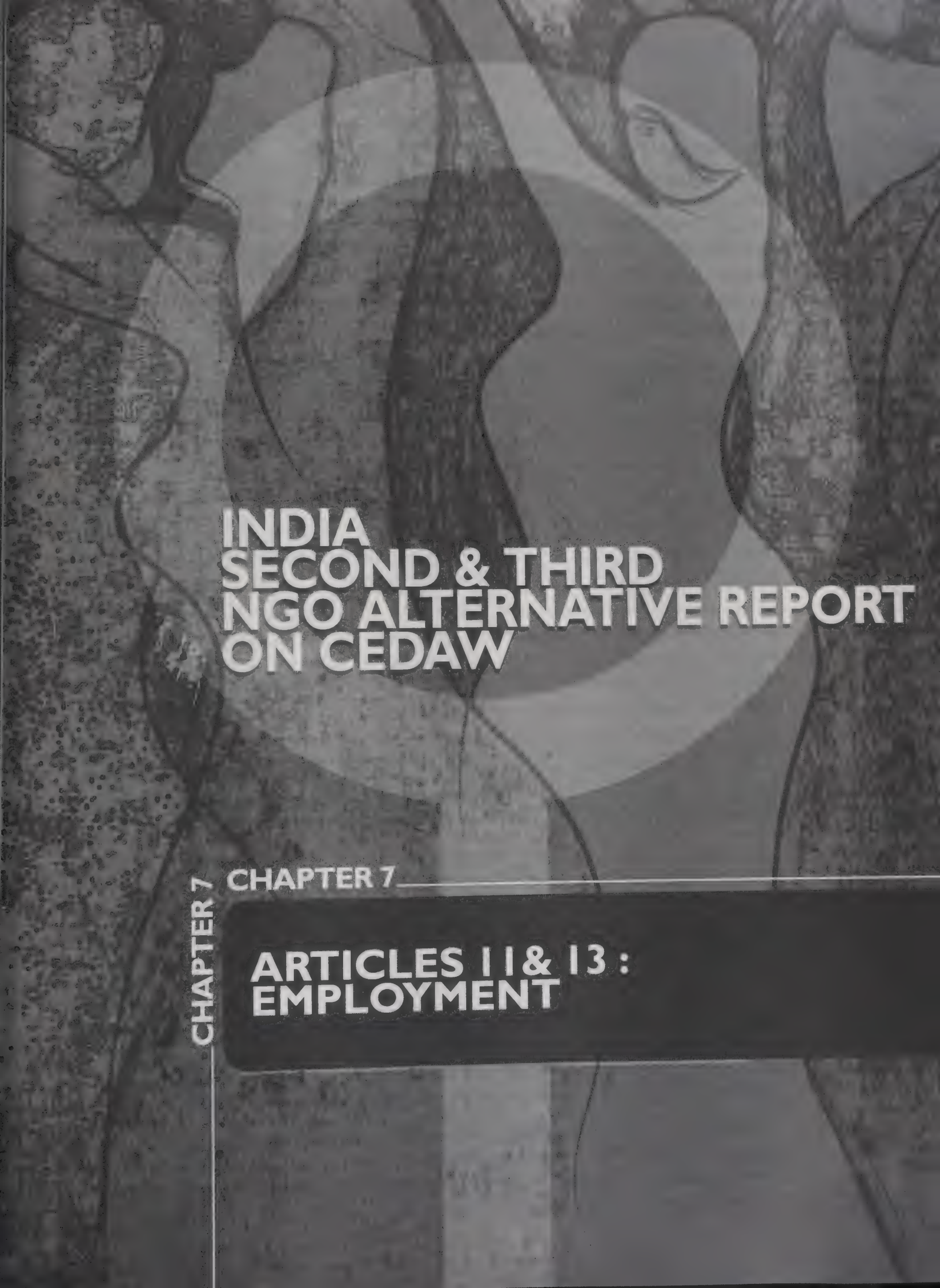
[15] A report by leading industrialists (a Policy Framework for Reforms in Education" by Ambani and Birla, April 2000) recommends that the Government should focus on primary and secondary education and leave higher and professional education to the private sector.

[16] In Andhra Pradesh, in 2000 there was an attempt to scrap the Social Science and Humanities Departments and bring in subjects like tourism more in keeping with the requirements of the market. Large-scale opposition to this move resulted in the plan being dropped.

[17] Probe report, other refs.

[18] Several media reports have highlighted how HIV positive children are discriminated against in school.





INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 7

CHAPTER 7

ARTICLES 11& 13 : EMPLOYMENT



EMPLOYMENT

7.1. PREVALENCE OF THE PROBLEM

The existence of constitutional protections to workers however, is no indication at all of the actual situation in which workers in general, in particular women workers find themselves in India today. Although women make up half the country's population, they constitute the largest group, which is excluded from the benefits of development. The stratified structure of society, the sexual division of labour, control over women's sexuality and active practices of discrimination have combined to invisibilise and devalue women's contribution to the economy. The twin problems of invisibility (of poor women) and insensitivity (of bureaucracy at all levels) have been tellingly brought out by the National Commission of Self Employed Women and Women in the Informal Sector.

7.1.1. Vulnerability of Women Workers

The Mid Term Appraisal of the 10th Plan recognizes the vulnerability of women workers: "the feminisation of poverty and the exploitation of women in low paid, hazardous and insecure jobs in the unorganised sector and in the export processing or special economic zones. According to the NSS 55th Round (1999-2000), women casual workers in urban areas are more vulnerable to poverty compared to not just their male counterparts but also to workers, both female and male in other employment categories."[1]

The concerns and issues of women workers have yet to figure seriously in debates, on the programmes and policies of the Government. This is despite the fact that the cumulative effect of three decades of a resurgent and ever expanding women's movement has ensured that any government seeking social legitimacy, be compelled to incorporate policies directly addressed to women.

Yet, women still encounter greater difficulties than men in access to employment. Women form a minority in decision-making and managerial positions. They continue to have inadequate access to productive resources. Gender discriminatory attitudes and an unequal sexual division of labour in production as well as in sharing of family responsibility are still prevalent. There are some categories of women who are even more disadvantaged such as disabled, migrant, dalit, urban informal and rural sector workers.

Majority of women – 87 per cent – are employed as agricultural labourers and cultivators. Among the women workers in urban areas about 80 per cent are employed in the unorganised sectors like garment industry, petty trades, service sectors, building constructions, domestic work, anganwadis, nursing in private hospitals, teaching in private institutions, home-based work (house hold manufacture sector) etc.

The condition is worst for the home-based workers who account for 30 million workers in India and 50 million in South Asia. A home-based worker is defined as a person who carries out work in his or her own home, or premises near the home which is not under the control of an employer or contractor and which results in a product or service for sale or remuneration. The home-based worker may be self-employed or may be working for an employer or contractor.

7.1.2. The Impact of Structural Adjustment

Women's share in organised sector employment is only 17 per cent and most of it is located in the lower rung of the employment hierarchy. The highest share of women in organised sector is in Kerala (38.6 per cent), and the lowest is in Bihar (6.7 per cent). The Mid Term Appraisal of the Tenth Five Year Plan by the Planning Commission has found that there has been a decline in organized sector employment in the last three years.

The opening up of the economy, particularly agriculture to international trade in the 1990s has impacted farmers in many ways. While new technologies and liberalized export favour rich farmers, privatization of natural resources including water, intellectual property restrictions, lack of access to new markets, unaffordability of technology to the small farmer and the depression of prices of foodgrain through cheap

imports impoverish the small and marginal farmer. Globalisation has meant the withdrawal of subsidies in the agricultural sector and the sharp reduction of investment on agriculture and rural development.[2] The neo-liberal economic policy trajectory whose relentless pursuit has led to a combination of unutilised capacity, unsold food stocks side by side with wide spread hunger, and increased unemployment. Survival for the rural poor under such conditions has become increasingly precarious. That such repercussions have disproportionately burdened women is widely recognised.

In the era of economic reforms there has been a decline and in some cases closure of employment opportunities for large numbers of women. This is evidenced in the full in work participation rates for women, from 444 per thousand in 1993-1994 to 419 in 1999-2000 across rural India, and from 154 per thousand to 139 in urban India in the same period.

Further, there has been a visible decline in women's share of employment in agriculture, manufacturing and mining and the sum total of services, adding up to an overall decline in women's employment share from 33 per cent in 1993-1994 to 31 per cent in 1999-2000.

There has been a decline in the growth rate of employment in India, alongside deterioration in the quality of employment. Most of the jobs are created in the low paid informal sector where a large number of workers struggle for long hours without minimum wages, overtime pay, sick leave and even maternity leave for women workers.

The *Approach Paper for the Eleventh Five Year Plan*, put out by the Planning Commission of India, in a trend that is cause for concern, advocates labour flexibility as a desirable method of "enabling" Indian workers to compete in the rapidly changing global labour market. India is among the countries that have the lowest salary and wage levels in the world, making it one of the most desired sweatshops for the countries of the North, that may be easily exploited, because even the Planning Commission sees the capacity to depress wages as a "labour cost advantage".[3]

7.1.3. Undermining Workers' Rights in the New Economy

The shift of ideology of the state from welfarism to neo-liberalism that calls for labour flexibility is pushing labour reforms through legislative, executive and judicial action.

The forces unleashed by technology, liberalisation and globalisation have adversely affected the rights of workers and their bargaining capacity vis-a-vis employers. While trade unions have weakened, the militancy of the employers is on the rise. The weakening of the workers bargaining capacity and rise in militancy of employers are manifest in the significant increase in the incidence of lockouts and decline in the incidence of strikes.

Pending legislative action because of the constraints of parliamentary democracy, the State has resorted to executive actions and counter productive judicial activism towards limiting legal rights of workers.

7.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India guarantees equality, equal protection of the law and the right against discrimination to all citizens. A central part of the Equality Code of the Constitution is Article 16, which guarantees equality in public employment to all citizens. Along with the fundamental rights, the Directive principles of State Policy have guided the enactment of special protective legislations to workers in different sectors, which is also in keeping with norms laid down by the International Labour Organisation from time to time.

Article 38 (2) is important: "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." This is a particularly important constitutional provision for workers in the informal sector, the export processing zones and those engaged in hazardous occupations, or occupations that have a long term negative impact on health.



Article 39 forms the basis of labour legislation, but is particularly striking in the expansive way in which it articulates state responsibility. It also lays a firm foundation for eliminating discrimination against women in the workplace and eliminating the exploitation of children:

The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Articles 41, 42, 43 and 43A provide for the right to work, the right to just and humane conditions of work, the right of workers to a living wage and worker participation in management.

Apart from laying down norms that set the standard for the treatment of workers, the Constitution also explicitly prohibits untouchability (Aritcle 17), child labour (Article 24) and forced labour and traffic in human beings in consonance with ILO standards against social exclusion and the performance of degrading forms of labour.

There are a number of welfare schemes that have been put out by the government and detailed in the 2nd and 3rd periodic report of the Government of India - for the upgradation of skills, enhanced access to resources, insurance, day care facilities and maternity benefits. However, the impact of these schemes is negligible.

The National Commission on Rural Labour had made several recommendations for improving the work participation rate of women and their income but the recommendations have not been acted upon.

The Government of India has recently introduced the National Maternity Scheme. Under this Scheme maternity benefit is provided as lump sum cash assistance to women of household below the poverty line. It is subject to a numerical ceiling of about 46 lakhs and a financial ceiling of Rs.138 crores. While the amounts released to the states for implementation of the scheme were Rs.68 crores in 1996-97 and Rs.50 crores in 1997-98, the amounts utilised by the states were Rs.52 crores in 1996-97 and Rs.40 crores in 1997-98. National Family Benefit Scheme is another Central government measure for the benefit of women who have lost their husbands. The financial ceiling is Rs.251 crores, while the amount released in 1996-97 was only Rs.92 crores. *This points to the underutilization of funds earmarked for the benefit of poor women in insecure family and employment situations.*

A. The Employment Guarantee Act

The National Rural Employment Guarantee Act, provides for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

This legislation is the result of a long political struggle, aims at protecting the rural population from hunger and destitution; contributing to social objectives, including the creation of durable assets, the protection of the environment, the empowerment of women; and the slowdown of rural-urban migration.

It also anticipates strong multiplier effects, which would have a positive effect upon rural livelihoods. This impact would be much larger than the actual expenditure, which has been estimated to be between 0.7 to 1.4 percent of the GDP. Scholars like Jean Dreze suggest that the Employment Act has the scope of reducing rural poverty by 70 per cent.

The implementation of such an Act is critical to human survival especially in a situation where neo-liberal economic policies have resulted in falling employment growth. The Act is a recognition that the State cannot retreat from pro-poor development and is responsible to ensure livelihood security and employment. The loss of control over common property and natural resources for wide sections of the population as an outcome of globalisation, makes decentralised planning, and land and water management by the people the prerequisites for an effective EGA.[4]

Studies in several parts of the country have shown that while women's work participation rates are comparable to men's in rural areas, there is a large concentration of women working as casual, unskilled labour in back breaking work sites. With the Employment Guarantee Act, therefore, it can be safely assumed that women will be the primary beneficiaries.

7.3. SOCIAL SECURITY FOR WOMEN IN THE UNORGANISED SECTOR

Social security means

(1) ensuring protection and promotion of livelihood together with developing safe and secure work conditions.

(2) Providing health, maternity, childcare and pension benefits for the elderly.

Social Security is a saving when one is in employment and it is an income when not In employment. Social Security includes all measures, which should be promoted, productive and is free from deprivation and protect the income of the worker due to the loss arising out of any contingency. Social Security should be covered to every person in the country. Forty percent of Gross Domestic Product (GDP), of other countries is earmarked as social security schemes for its citizens. But in India only 1.5 per cent of GDP is earmarked for social security for its citizens.

India has a total workforce of around 400 millions, out of this 92 per cent of labour i.e. 368 millions is in unorganised sector. Fifty percent unorganised labour i.e. 184 millions are women workers involved in the agriculture, construction, vending, self-employment, domestic work, anganwadi, forest work, fisheries, agarbathi [incense sticks] and beedi [thin hand rolled cigars] rolling etc.

Even though unorganised labour contributes 65 per cent to the national income, they are not covered under any social security schemes nor provided with welfare.

The primary objective of social security is to ensure livelihood to those who are deprived of the same for any reason, temporary or chronic, as the case may be. The Universal Declaration of Human Rights (UDHR), has included the right to social security as a basic human right.

The Indian Constitution lays emphasis on the need to promote worker's welfare. Article 39 of the Constitution requires the state to provide with the means to an adequate livelihood, promote fair distribution of wealth, ensure equal pay for equal work and protect child and female labour from exploitation.

There is no working and consistent social security programme for workers in India that covers all workers in all sectors of employment.



For the betterment of women unorganised workers the following schemes are a must:

i) Medical care

ii) Sickness benefit

iii) Employment injury benefit

iv) Invalidity benefit

v) Maternity benefit including pre and postnatal care with nutritious food supplement

vi) Day care center for the children

vii) Old age benefit including pension

viii) Family benefit

xi) Survivor's benefit

x) Integrated insurance scheme.

7.4. RECOMMENDATIONS

7.4.1. Addressing Women's Needs

- Macro economic policies and poverty eradication programmes to specifically address the needs and problems of women who comprise the majority of the population below the poverty line and are very often in situations of extreme poverty.
- The flow of benefits to women in the 3 core sectors of Education, Health and Employment need to be monitored as they together could contribute a great deal towards mainstreaming women into national developmental process.
- Strategies should be designed to empower the women to meet the negative social and economic impacts, which may flow from the process of globalisation and at the same time enhance their capacity so that they can utilise the opportunities opened by this process.
- In view of the critical role of women in the agriculture and allied sectors, as producers, concentrated efforts must be made to ensure that benefits of training, extension and various programmes will reach them in proportion to their numbers. The programmes for training women in soil conservation, social forestry, dairy development and other occupations allied to agriculture like horticulture, livestock, including small animal husbandry, poultry, fisheries etc., need to be expanded to benefit women workers in the agricultural sector.
- The important role played by women in electronics, information technology and food processing and agro industry and textiles has been crucial to the development of these sectors. They should be given comprehensive support in terms of labour legislation, social security and other support services to participate in the industrial sector.
- In order to substantially improve the economic status of poor women working in the informal sector of the economy, there is a need to devise concrete strategies which can help to enhance the ownership of and control over productive assets of these women. Some of the assets that women can be given are a plot of land, housing, tree pattas, joint ownership of all assets transferred by the state to the family, live stock license, bank accounts, membership of organisations and identity cards.
- Employment and income generation activities including self employment along with necessary training for skill upgradation must constitute the most important intervention for raising the status of women.
- New micro-credit institutions can be established and existing institutions strengthened to enhance women's access to credit for consumption and production.

- Women's contribution in the informal sectors (including home-based workers) must be recognised by way of reinterpretation and redefinition of conventional concepts of work wherever necessary and this should include Census records, preparation of satellite and national accounts etc.
- The statutory schemes under ESI and the Maternity Benefit Act are applicable to limited classes of establishments specified thereon. It is therefore necessary to take steps to extend the scope of the statutory scheme on the one side and the national scheme on the other.
- Even with the limited coverage the benefits of the schemes are not being fully utilised. This could be due to ignorance, cumbersome procedures and other reasons. It is therefore necessary to simplify the procedures and to create greater awareness among the beneficiaries.

7.4.2. The Employment Guarantee Act[5]

The National Rural Employment Guarantee Act is a new legislation that has just been put in place. It is important to anticipate problems that might arise based on the experiences on hand. The Employment Guarantee Scheme in Maharashtra is the oldest and largest public works programme in the developing world, and has been in place since the early 1970s. The concerns that arise from this programme serve as a ready reckoner in the assessing the progress of the National legislation.

- Defining work and household under the Act is critical. The definition of a household is fraught with difficulties especially in a context in which the absence of homesteads often means that a number of families share the same roof and kitchen.
- To begin with women should be made aware of how EGS works and informed of their rights and entitlements. Women already have representation in panchayat. With some training, this should give opportunities to women members and women sarpanches to take an active part in articulating their needs of work at village level, participate in the (EGS) budget process at the local level as well as monitor work execution. They could also be trained to be part of vigilance committees. Such practices have been successful for instance in monitoring PDS.
- Reasons why the administration has been unable to award any of the mandated entitlements to women have to be examined and appropriate modifications made.
- Enriching their private capabilities by according skills/training to women in agriculture and related activities. Exploration and research in identifying marketable and location-specific skills for women is required.
- Creating community asset under EGS that answer women's needs and devising ways to award the ownership of community assets created under EGS to women's groups. There are many existing models available where wasteland development is rewarded by women's collective ownership of land reclaimed or ownership of trees if they develop nurseries. There is great scope for this in social forestry and watershed development. In cases of joint private land ownership, mentioned in some sections of EGS work, it is possible to build in women's collective ownership.
- Other existing government programmes such as health, literacy, education, child care, etc, could take advantage of the presence of large number of women on EGS sites to focus these services on women. What is needed is to create a synergy of services where EGS sites provide an ideal site for health, literacy and awareness programmes. EGS sites also offer opportunities for Social Action.
- At present EGS perpetuates existing social and gender inequalities. The costs and benefits of such practices to different sections must be highlighted through research and investigation.
- There has to be a clearer perception among officials at lower levels on what is meant by gender sensitivity - understanding how programmes affect women; what their disadvantages are; traditional



conceptions on gender roles and how they generate unequal burdens between men and women, unequal entitlements and lower participation in public sphere and how EGS should guard against perpetuating these. Migrant women EGS workers face special problems that need special attention.

- Social Action Groups can play a valuable role in mobilisation and of women. This used to be so in the past and could be revived. Women's collective strength could be encouraged to bring about changes in gender relations. EGS has been instrumental in bringing together large numbers of women at work sites - an experience that has been positive for women. In areas where social action groups have played a dominant role as in Jawhar, illiterate tribal women are very assertive and demand work.
- EGS would contribute much to the cause of women by simply fulfilling its original agenda: soil and water conservation, conservation of forests and other natural resources which feed into women's special requirement of water, fodder, fuel besides enhancing productivity in agriculture.

7.4.3. Umbrella Legislation to Provide Minimum Social Security for Unorganised Labour in India.

Government constituted Second National Commission on Labour 15th October 1999 to review existing labour laws and suggest umbrella legislation for the unorganised sector.

For the first time, special focus was given to the unorganised sector to recommend measures, which would contribute to improvement of working conditions and safety in places of work and security. The Commission was expected to radically review the forty existing laws and procedures and determine the kind of system and legislation that would help the economy, industry and labour. This was necessitated by the impact of globalisation on the labour market.

Analysing the Bill, workers organisations identified the following limitations:

a) The dominant characteristic of employment in the unorganised sector is its discontinuity. The most important need of the workers is security of employment. This can be met only by means of appropriate decasualisation measures. But the Bill is silent about security of employment or job security. Without employment security a worker cannot get any other benefit under the proposed Bill and most of the workers in the sector may be excluded from the coverage.

b) Regulation of employment is not reflected in the umbrella legislation which is an important aspect to the working class.

c) The Bill has failed to create an enforceable right to work, in which the obligation to provide employment will be on the state.

d) There are provisions in the Bill providing for formulation and implementation of welfare schemes. There is no provision in the Bill, which seeks to create individual entitlement to benefits flowing from such schemes.

e) The Bill does not provide for the system of accountability and the schemes are implemented through executive fiat.

f) There are provisions in the bill to ensure livelihood but this are vague and fails to create legal entitlements. For example: what kind of remedies available to a worker who is out of employment during monsoon and how long is such a worker entitled to assistance and what are the remedies available to such person when s/he cannot secure the benefit.

Workers organisations proposed the following suggestions to overcome the limitations in the Bill.

a) Every citizen shall have the right to work or employment.

b) State shall make provision for compensation to workers against unemployment, under employment and loss of employment.

c) Every eligible worker shall be entitled to the benefits arising out of unorganised sector workers' welfare schemes.

d) There shall be provision for judicial enforcement of the entitlements created by the schemes.

e) There should be specific methods of mobilising resources by way of collecting "cess".

f) The provisions concerning the functioning of the board must be reexamined to create legal entitlements for the worker.

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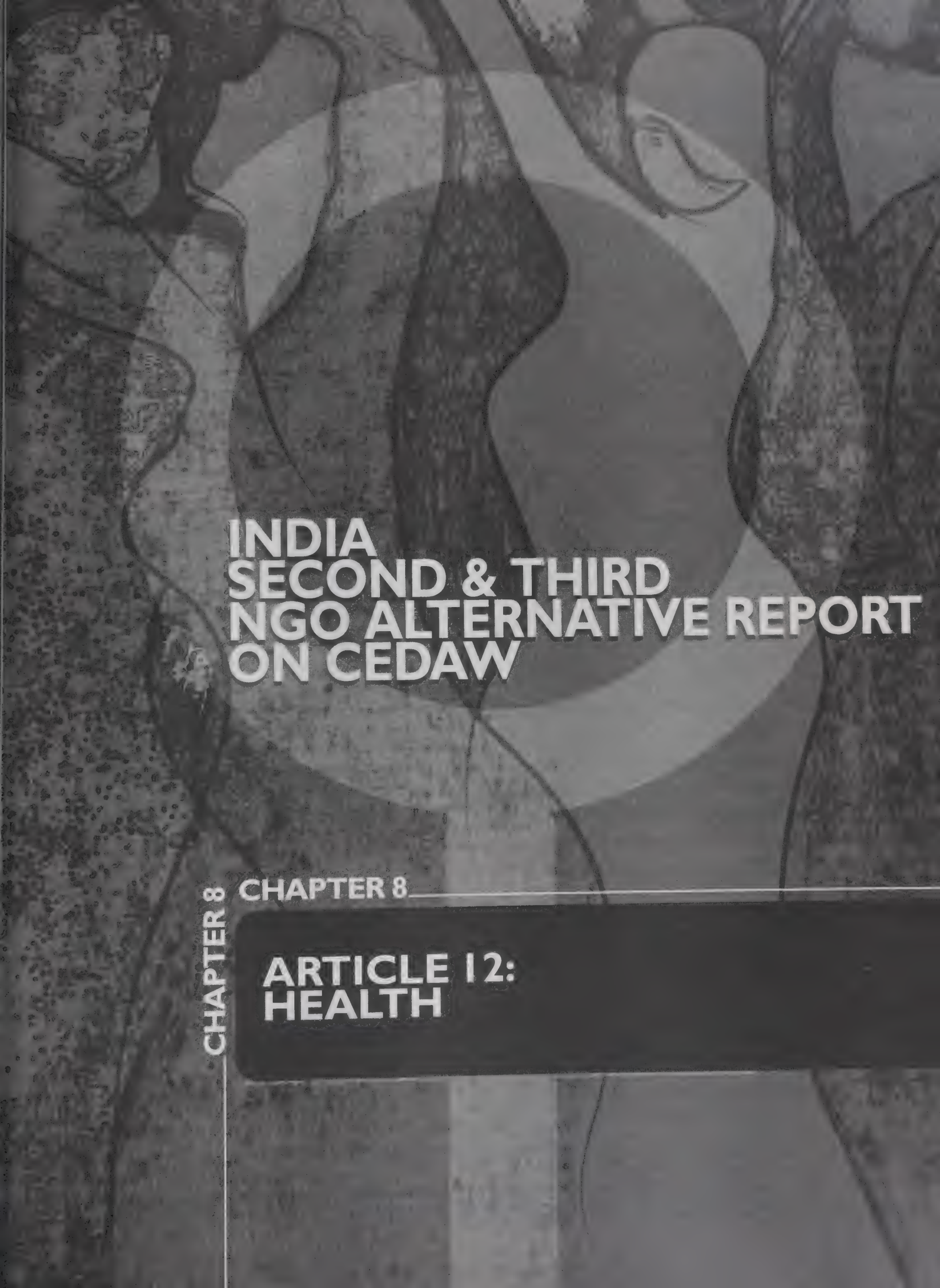
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INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 8

CHAPTER 8

ARTICLE 12: HEALTH



HEALTH

8.1. PREVALENCE OF THE PROBLEM

8.1.1. Women and the Public Health System

It is important to locate the issue of women's health within the larger debate on the public health system. A close look at statistics reveals a correlation between poverty and poor access to basic health care, with mortality and morbidity rates being far higher for dalit and adivasi people that for other sections. Child mortality is also higher among these groups both in rural and urban areas. Diseases like Japanese encephalitis, Kala Azar, malaria [plasmodium falciparum most recently] and dengue have reached epidemic proportions and have affected socially marginalised and vulnerable groups disproportionately. Given the costs involved, the worst affected people cannot access private health care and public health care in these areas is virtually absent.

The third National Family Health Survey conducted in 2005-2006 in all 29 states shows that the percentage of children in the age group 6-35 months who are anaemic is as high as 80 per cent or more in Chhattisgarh, Gujarat and Punjab. It is only slightly lower - around 72-74 per cent - in Orissa and Maharashtra. For adults, while anaemia is high among both sexes, it is very high among women, with **the prevalence of anaemia among women more than double that among men in all states.**[1]

> During the mid-90s there was an outbreak of gastroenteritis in the Adilabad district of Andhra Pradesh...[A] report revealed that the tribal population in this district had no access to livelihood for several months before the outbreak, as a result of which they were unable to even fulfil the basic caloric requirements. The public distribution system was practically nonexistent and due to severe drought the forests could not be tapped for food sources. This was further compounded by lack of safe water supply. When the outbreak occurred the people resorted to private practitioners since the public health services were neither available nor responsive. It is only when the suffering and death caused by the epidemic was reported in the vernacular newspapers that the government sent a team to investigate the outbreak.[2]

The reasons for the collapse of public health systems are deep rooted. The commercialization of health care has meant not just the increase in private facilities but the devaluation of the public system as well, witnessed most starkly in the exodus of trained medical professionals from the public health system into corporate health care. There has in the course of this shift been a conflation of costs with quality, which puts the poor in a very vulnerable situation. [3]

8.1.2. Maternal Health and Morbidity

The reality in India shows up an existing disparity in health outcomes for women who become pregnant: India has a maternal mortality ratio (MMR) of 540 deaths per 100,000 live births. In actual numbers this means that 130,000 women die each year due to preventable causes related to maternal health, or one woman dying every five minutes. Uttar Pradesh state (707 MMR) alone accounts for close to forty thousand maternal deaths per year: all due to preventable causes. According to estimates, maternal morbidity is also unacceptably high: between 4 and 5 million women suffer ill health due to childbearing complications (Jejeebhoy 2000:134).

- This is a grave violation of women's right to life and health because these deaths are preventable given the current state of resources and technology in India
- The burden of ill health is being disproportionately borne by women
- The state has failed to provide women with the system of health protection that enables them to go through pregnancy and childbirth with safe and healthy outcomes.

Reproductive Tourism

Reproductive tourism has emerged as an effective mode of sharing and outsourcing surrogate motherhood. The market for womb space is the new capitalistic enterprise that is recommended to poor states and ICMR estimates that is could earn $ 6 billion in a few years [4]

8.1.3. Women and Mental Health

There is a relation between poverty and common mental disorders. There are of course also specific factors like harassment - in conjugal homes, at workplaces, in communities - and adverse reproductive experiences, which have been found to have a strong impact on women's mental health. One recent study has found that while even the poorest communities have internalized the ideologies of family planning propagated by the state, this did not lead to informed and planned reproductive choice, but led instead to the use of abortions and terminal contraceptive methods which impacted adversely on mental health.

It has also been suggested that unplanned urbanization and the dispersion of the extended family results in a breakdown of social support which puts enormous pressure especially on migrant labour. [5] Similarly, the shouldering of the entire responsibility of family, where men have migrated out in search of work, coupled with very scarce survival and livelihood options has a negative impact on women's physical and mental health as well.

Childhood sexual abuse, female infanticide, repeated abortions consequent on sex determination tests, the resulting homelessness and psychological trauma inflicted by dowry demands on newly married women, rape and sexual assault of women in situations of armed conflict and communal violence; and the constant fear of aggravated assault especially in the case of dalit and adivasi communities, but also increasingly in the case of young women students, result in increased emotional morbidity. This is aggravated by low levels of education, lack of autonomy in decision making, economic dependence and most importantly institutional spaces that are structured in ways that do not provide space for security or adequate redress for women.

> The Schizophrenia Research Foundation at Chennai, India carried out an ethnographic, qualitative study of 75 mentally ill women who were separated or divorced. It was found that all but eight of these separated women lived in their parental homes with the onus of care being borne by the aging parents. Legal separation had occurred only in 16 cases, all of them being educated women. None of them remarried, while 34 of the husbands had done so. The fathers looked after only six of the 26 children.[6]

8.1.4. Armed Conflict and Women's Health: Kashmir[7]

Armed Conflict impacts on the general health of the region. An independent survey of the Government Mental Hospital in Srinagar found that post traumatic stress cases increased from 1,700 in 1990 to 17,000 in 1993 and to 30,000 in 1998.[8]

Although Kashmir has a total of 1,169 government hospitals or sponsored health care clinics, there has been an exodus of qualified medical professionals out of the state, rendering the government facilities completely inadequate for meeting the basic health needs of people in the valley. The doctors who remained in Kashmir preferred to be based in the cities, leading to a complete collapse of the health care system in the villages.

The crisis for people was aggravated at night – the "terror of the night"– given the insecurity created by armed presence especially after dark. Even where facilities existed, the lack of basic medical supplies made them largely ineffective in meeting basic health needs. All this has led to an increased dependence on local doctors and traditional faith healers.

"The peripheral medical infrastructure in Kashmir was disrupted by the conflict. Absent staff, lack of supplies,



and the inaccessibility of the facilities became problems. When health needs forced people to seek medical aid, their first preference was to consult the unqualified local doctors in and around the villages."

In this situation, the restrictions on women's mobility, the ban on contraception, the increased incidence of rape and abductions and the complete absence of infrastructure to deal with women's reproductive health needs worsens the situation of women in Kashmir.

8.1.5. The Bhopal Gas Disaster and Impact on Women's Health[9]

According to government estimates, 250,000 people were initially poisoned by the 1984 gas leak in Bhopal. In the twenty-two years since, countless more have been poisoned and successive generations continue to bear the scars of the gas contamination. But health care and health education for women has been far from adequate in Bhopal.

In February 1985, it was found that pregnant women suffered spontaneous abortions, still births, diminished foetal movements, and menstrual disturbances. Hospital and clinic statistics at that time revealed high frequency of pelvic inflammatory disease, endocervicitis, menorrhagia, and suppression of lactation.

The Sambhavna clinic has examined thousands of gas and contamination affected women since 1996, finding high rates of gynecological problems such as leucorrhea (white discharge from vagina), menstrual irregularities, amenorrhea, and sterility. Sambhavna records also indicate that in some neighborhoods near the Union Carbide factory, the average age of menarche is 13.75, more than a year later than the national average for India.

8.1.6. Rural Access to Health and Witch Hunting[10]

> In Tensar village, situated 20 Kms off Rourkela City in the state of Orissa one tribal woman Nevni Ikka had gone to visit her neighbour Sukhi Ikka and as soon as she entered her house then Sukhi's daughter fell seriously ill. She lost her senses. This made the family members of Sukhi aghast and within moments Nevni was no longer their lovable neighbour she was a Witch. The villagers were informed immediately and they gathered in Nevni's house loaded with latthis. She was beaten mercilessly and was forced to parade naked for hours together in the village in front of her children.
>
> *(Source: "Dainik Bhaskar", May 30, 2004)*

A majority of the adivasi people of Jharkhand have a firm belief in witches and witchcraft. They believe that diseases, unnatural deaths (eg. death due to cholera, small pox, drowning, fall from the thunder and lightening), ill health, destruction of domestic animals and crops are the result of witchcraft. So witches are considered dangerous and are socially boycotted, fines are imposed by the Panchayat and people suspected of being witches are killed. Villagers rarely report these incidents to the police. They support the killer. Killing a witch is not only considered non-culpable, but also desirable and justified.

One of the factors responsible for the persistence and increase in witch hunting is the large-scale, aggressive privatisation policy being followed by the governments. As a result, there has been a collapse of the public health system. Hundreds and thousands of families have lost members, mainly children, due to the increased costs of medicines and health care. The sections worst affected have been the tribal-dominated areas in remote and inaccessible parts of the country. Epidemics of malaria, diarrhoea, encephalitis and other preventable diseases have taken a heavy toll. In the absence of any medical support systems, tribal communities rely on the local *ojha, baiga or gunia* for magic spells to cure the sick, and thereby the power of these people over the community increases. Thus there is a direct inverse relation between the increasing ill health of India's poor and the increase in superstitions and dependence on the traditional healers and practitioners of witchcraft. This is one of the major reasons why it is so difficult to break their hold over community belief.

8.1.7. Laws, policy and institutional provisions in practice

If we examine how policies and laws on this issue are interpreted, enforced and implemented, there appears to be overall lack of political will to implement the CEDAW Committee's Concluding Comments. There are ambitious programmes but inadequate services and insufficient trained personnel, idealistic goals but lowering of resource allocation, poor monitoring and law enforcement.

Women have not been part of planning, implementing, monitoring and evaluating any policies, plans or programmes. There has been no attempt to understand what women really want.

Despite the promise of a comprehensive range of services within the reproductive and Child Health programme (1997), the maternal health services actually provided under RCH continue to be focused on antenatal care. Provision of delivery care and provision of emergency obstetric care (EOC) are being neglected (Mavlankar, 2001). Primary Health Centres are not designated to provide EOC services. Access to blood transfusion in rural areas is almost nil.[11]

There is no legal requirement in the existing system on accountability for quality care nor binding standards for various levels of health facilities. The majority of the rural population (and a significant population in urban areas) is not aware of their right to question the quality of clinical care. Many are even afraid to raise issues on the quality of clinic care because of the perceived consequences resulting from such actions (Mavlankar, Ramani, and Shaw, 2003).

8.1.8.Personnel

The government is unable to ensure that doctors and nurses reside in the Primary Health Centres or Sub-Centres or in the same village, and is unable to provide accommodation for all of them. Only 38% PHCs have adequate staff in position[12]

> Village Tikkar in Halvad Taluka of Surendranagar district (Gujarat), is very well connected by transport, it has a high school, the community is very cooperative. Three single women community workers of the NGO are staying alone in the village. Personal safety is not an issue. There is a quarter for the ANM, but she still does not live there. The Tikkar PHC has a new building and is well equipped , but not a single delivery takes place in this PHC.[13]

The RCH programme has had since October 2000 a scheme of training of traditional birth attendants (TBAs) or dais in 142 districts of India. An evaluation of the programme in the Dangs district (Gujarat) however showed that none received a certificate and identification card after being evaluated, and neither did they receive any follow up support by the ANM or doctor.[14]

8.1.9. Resource Allocation

The government expenditure on health is 7.5% of the GDP[15]. However, in some states, Gujarat for example, over the last five years the allocation of resources to the health and medical sector that outlay has declined from 4.81 percent to 2.87 percent. The Tenth Five Year Plan in terms of Health and Gender sets the target of reducing Maternal Mortality Ratio from 5.4 per 1000 live births (in 1999) to 2 per 1000 live births in 2007 and 1 per 1000 live births in 2012 (in Das 2002:221).

Plan and Non -Plan outlays of the Government of Gujarat over the last 5 years

Item	Unit	1999-2000	2000-2001	2001-02	2002-03	2003-04
Total State Annual Plan & Non Plan Outlay	Crore	20673.57	24670.98	37792.84	31054.02	31998.03
Plan & Non Plan Outlay for Medical and Public Health (PM&PH)	Crore	995.40	973.08	953.83	948.74	919.41
% of PM & PH to Total Outlay	%	4.81	3.94	2.52	3.06	2.87

PM&PH = Plan for Medical & Public Health

NPM&PH = Non-Plan for Medical & Public Health

Source: http://www.gujhealth.gov.in/basicstatistics/index.htm



8.2. THE RIGHT TO FOOD

Different parts of the country have witnessed the spiraling of starvation deaths over the past five years, particularly acute in rural and forest areas. Mahabubnagar District in Andhra Pradesh, Kashipur in Orissa and Wyanad in Kerala are but a few instances. The reasons for chronic malnutrition, hunger and starvation are closely tied to the breakdown of traditional livelihoods because of trade liberalization policies, landlessness, the decline in real agricultural wages and the curtailment of adivasi communities' access to forests.[16] Caught in the trap of debt bondage, surveys have found that in the best situations, families "rotate" hunger, with one person going hungry each day. Children drop out of school in order to find work that will feed them.

The pressure on women in rural households becomes more acute in this situation:

> "The time and energy they spend in fetching water, firewood and fodder shoots up. But their food intake goes down. The women eat last, after feeding the rest of the family. They then have to worry about feeding the livestock. That mix of rising exertion and falling nutrition will devastate many."[17]

The Right to Food is recognized as a basic human right by the Universal Declaration of Human Rights of the United Nations in 1948 (UDHR), the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

> The right to food as an enforceable claim to a minimum quantity of food of a certain quality carries with it correlated duties on the part of others, particularly the state. These comprise the duty to avoid loss of means of subsistence, to protect against deprivation of the means of subsistence, and to provide for the subsistence of those unable to provide for their own. Recognition of these duties may (1) help channel food aid more effectively; (2) enable governments to do the things that they should by providing a solid foundation for development programmes/ policies, and to build a consensus in their favour; and (3) sharpen the focus of civil society organisations (CSOs) as active agents in a public strategy to eliminate hunger, malnutrition and famines. [18]

8.3. IMPACT OF HIV/ AIDS ON WOMEN

While the growing figures of HIV Aids infected population is reason for grave concerns, it is even more critical for women since women have been identified as a high risk group. Of the total estimated number of 12,4995 people suffering from the disease according to NACO, 10,6669 have been infected due to sexual contacts. This figure is telling. Women are at particular risk due to sexual contacts.

Gender-based violence is psychological, physical or sexual violence that is rooted in the power differential between men and women. Gender-based and sexual violence has significant implications for the spread of HIV/AIDS and for HIV prevention. Sexual violence and rape place women particularly at risk of infection particularly in high prevalence settings. Violence and the fear of violence acts as a significant barrier to women negotiating condom use or fidelity with their partners or choosing to leave risky relationships. As the Positive Women's Network says, 'Being diagnosed with HIV/AIDS rewrites women's lives. Fear of rejection, stigma, discrimination and harassment prevents them from disclosing their status.' Multiple fallouts take place simultaneously. She may be driven away and in situations where the husband is dead from the same disease, she is deprived of her share in the property. Livelihood and security concerns further places her in a more vulnerable position thus perpetuating the state of affairs. Particularly disturbing is the scenario for women sex workers.

Women living with HIV/AIDS have the same rights as others to education, employment, health, travel, marriage, procreation, privacy, social security, scientific benefits, asylum, etc.

Rethinking strategies to address the issues fueling the epidemic becomes increasingly important. The onus is on governments to ensure that enough resources are allocated to AIDS prevention and care programmes, that all individuals and groups in society have access to these programmes, and that laws, policies and practices do not discriminate against people living with HIV/AIDS.

8.4. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

8.4.1. Recognition of Health as a Right

There has been recognition of the role of the state regarding people's health in the Constitutional guarantee: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..." (Article 47, Constitution of India). It has also been articulated by Supreme Court case law that reads the right to health into the right to life under Article 21 of the Constitution[19].

8.4.2. Existence or Formulation of Laws and Policies

Since the last report to the CEDAW Committee, India has formulated a number of policies including the National Population Policy (NPP, 2000), the National Health Policy (NHP, 2002) and has reviewed the Medical Termination of Pregnancy Act (MTP, 2003). Apart from that there is also a National Maternity Benefit Act of 1961, and a Child Marriage Restraint Act (1929 amended 1978).

The right to abortion is currently not recognised under law[20]. However, the state permits abortion through its Medical Termination of Pregnancy -MTP Act (1971, amended 2003). The MTP Act permits abortion if "the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health" and any woman above 18 years can freely seek abortion services without any other person's consent. The state also promotes safe abortion through the same Act, which specifies that abortion may only be performed at government or 'approved' hospitals. The Indian Penal Code (Art. 314) specifies punishment for "miscarriage" that leads to a woman's death. Forced sex-selective abortions are declared illegal in the Pre-Natal Diagnostic Techniques Act (1994). Forced "miscarriages" are also criminal (Indian Penal Code, Art. 313).

8.4.3. The Gender Analysis in the Documents: Recognition of the Problem

Women have not been consulted in a specific manner in the process of policy formulation but have been informed along with other stakeholders like NGOs. There has been no specific incorporation of women's experiences in the policies.

While the National Health Policy (NHP 2002) states that "Social, cultural and economic factors continue to inhibit women from gaining adequate access even to the existing public health facilities" and yet goes on to take an instrumentalist approach to women. Rather than recognizing women's right to health care on its own merit, it addresses women only as catalysts for improving the health standards of the community. There is neither a gendered analysis of women's different needs nor recognition of disadvantages women face in seeking healthcare.

The National Youth Policy (2003) acknowledges (para 5.2) that "prevailing gender bias (is) the main factor responsible for the poor status of health ... of women in our society."

The National Maternity Benefit Act, 1961, which provides for 12 weeks' maternity leave for working women recognizes that women are entitled to leave with pay when they go through childbirth. However, male partners are not granted paternity leave to support the women in child rearing. Moreover the Act specifies that only working women with a continuous employment record qualify for this paid leave, which does not recognize that most women are compelled for gendered reasons to work in the unorganized sector where they do not get continuous employment. Under the National Maternity Benefit Scheme, maternity benefit in



the form of one-time cash assistance is provided to women of households below the poverty line. Only pregnant women for up to the first two live births provided they are of 19 years of age and above are eligible. Thus, young married girls who have to prove their fertility and become mothers at an early age are excluded.

The National Population Policy 2000 (NPP) recognizes the existing gendered disadvantage of women's access to health. The government does explicitly recognize women's biological needs, but does not clearly enumerate how current discrimination by various institutions creates material and ideological barriers for women. (para 17)

8.4.4. Policy Solutions

The National Population Policy 2000 lays out its long term, medium term and immediate objectives as stabilizing population by 2045, bringing the Total Fertility Rate (TFR) to replacement levels for contraception, while providing integrated services for basic reproductive and child health care, respectively. The Policy states fourteen National Socio Demographic goals to be achieved by 2010, among which it has set the goal of reducing Maternal Mortality to below 100 per 100,000 live births by 2010[21]. This seems to be rather ambitious considering only 6 years are left for the target period and the MMR continues to be as high as over 400 per 100,000 live births. (See *Recording of Maternal Mortality* below).

The NPP also mentions several Strategic Themes. The second strategic theme on Convergence of Service Delivery at Village levels had several positive features. Integrated and coordinated service delivery through a one-stop basic health care facility may fulfil the demand of women's groups for a safe place in the village where they can deliver their babies, be examined and so on.

The section on Funding promises 'adequate funding', 'continuing of subsidies' for preventive and promotive services and priority allocation of funds to improve infrastructure. The NPP calls for a doubling of the annual budget of the Department of Family Welfare. At the same time, the NPP appears to state that although the annual budget has been consistently increasing, improvements in quality of care and outreach of services have not been affected. In this case, the doubling of the annual budget may not prove to be the only solution. There are no specific directions for an optimal and need-based use of budgetary allocation.

The policy highlights the increasing role of the private health sector in secondary and tertiary level care and speaks of the need for statutory licensing, regulation and monitoring to ensure minimum but adequate standards of diagnostic centers. However, it is silent on the role of the private sector itself in causing adverse health impacts for women by pollutants, poor working conditions and so forth.

The National Policy for the Empowerment of Women (2001) reiterates that women should have access to comprehensive, affordable and quality health care (NPEW, Para 6.2). The National Health Policy 2002 sets a goal of bringing down the Maternal Mortality Ratio to 100 by 2010.

The National Youth Policy (2003) (para 5.2) enunciates that:

(b) Women will have access to adequate health services (including reproductive health programmes) and will have full say in defining the size of the family.

(e) Young men, particularly the male adolescents shall be properly oriented, through education and counseling to respect the status and rights of women.

8.4.5. Implementation of Services

The data collected from three states of Uttar Pradesh, Maharashtra and Gujarat indicates that although services are reaching some women for prophylactic ante-natal care, state services for delivery, post-partum care and safe abortion are poor. For example, according to the NFHS II (1998-99), in Gujarat (MMR

of around 400) the percent of births whose mothers received antenatal check-up from a health professional was 86%, but the extent of health services reduces during childbirth and after. In 54% of the births, women have a delivery attended by a trained health professional, but a majority of these births take place in the private medical sector. Only 10% of non- institutional deliveries were followed by a postpartum check-up within 2 days.[22]

The low nutritional status, cost of delivery services, the over-emphasis on family planning services, denial of services are serious issues affecting maternal health in Maharashtra. The implications of gender based violence figures nowhere.

Unsafe abortion is one of the most important reasons for maternal deaths. UP has the highest estimated rate of abortion in the country. Over 20 lakh abortions take place in the state of Uttar Pradesh every year of which about 60% are induced. Complications from abortion are responsible for 15 - 30% of all maternal deaths in the state. Serious complications of unsafe abortion include infection, bleeding, and injuries to the reproductive tract[23].

8.4.6. Supreme Court Orders on the Right to Food

The People's Union for Civil Liberties (PUCL), jointly with other NGOs, brought a complaint against the ministry of consumer affairs and public distribution, Food Corporation of India(FCI) and six state governments.

They held the federal institutions and the state governments responsible for mass malnutrition, and demanded that the country's huge foodgrain stocks be used to prevent hunger and starvation.

On November 28, 2001, the Supreme Court passed a significant interim order. This has three components: (1) it converts the benefits of nutrition-related programmes into legal entitlements; (2) it directs all state and central governments to ensure public awareness and transparency of these programmes; and (3) it directs all state governments to introduce cooked mid-day meals in primary schools within six months.

Progress, however, has been slow and uneven. The Supreme Court also warned in a recent statement: "(For) any state which does not comply with the directions to implement the mid-day meal scheme, there will be no transfer of central funds" *(The Times of India,* September 4, 2002). So even though gains have been limited in terms of greater access of the poor and hungry to surplus food, the likely gains from conversion of benefits of nutritional programmes into legally enforceable entitlements would be substantial.[24]

8.5. CRITICAL AREAS OF CONCERN

- The virtual collapse of the public health system and the inaccessibility of basic health care to the majority of people in the country.
- The lack of treatment and concerted action in the case of epidemics especially in remote areas and the serious paucity of medical supplies and personnel.
- The denial of basic redress especially in terms of access to adequate treatment and health care over the long term to survivors of the largest chemical genocide in the country by the Union Carbide in Bhopal.
- The widespread prevalence of hunger and malnutrition and the rise in starvation deaths in the country.
- The inability of systems for tracking maternal deaths to gather adequate or accurate information.
- Policy mindsets seem to be focused on population control and not on reducing maternal mortality on a war footing.
- The State is not fulfilling its obligation to ensure universal access to essential and emergency medical services. Neither are women and their families provided with comprehensive information and services for routine care.



- The quality of care for these services is a problem and there are no legal mechanisms to regulate minimum medical standards.
- There are no feedback mechanisms within the state health system for detecting the absence of quality services or malpractice. Women survivors or families are unable to seek redressal and justice.
- Private sector health care, which the women have to resort to, goes unregulated. This constitutes inaction by the State parties towards addressing non-state actors.

8.6. RECOMMENDATIONS

- The Government should aim for 100 percent availability of critical infrastructure, staff, equipment and supply inputs at all levels of public health facilities, especially in remote areas and prioritise provision of health care access to poor and marginalised communities.
- Increase allocation of resources for health.
- Improve access to essential and emergency medical services.
- It is obvious that the toxic gas released in December 1984 has had long term hormonal effects in women. Existing data must be reviewed, new research must be initiated, and health care for women restructured and made effective and available. The problems faced by gas and contamination affected women in Bhopal must be confronted not just with mainstream medicine but also alternative medical solutions. Furthermore, well-funded and carefully aimed public education programmes must be designed and implemented in Bhopal's gas and contamination affected neighborhoods.
- The central government must set up a National Commission on Bhopal with the necessary authority and funds to thoroughly research health issues specific to gas and contamination affected women, provide appropriate treatment, and provide for public education about women's health issues in Bhopal's gas and contamination affected communities. The commission must have active participation of non-government doctors, scientists, and representatives of survivor's organizations.
- The Government must authorize credible institutions at the state level to ensure accurate reporting of maternal mortality for each state and district.
- The Government is responsible for enforcing the right to food. It must take all measures necessary to reduce rural indebtedness, and eliminate hunger, malnutrition and starvation in the country.

End Notes

[1] Jayati Ghosh, Nutrition Concerns, September 11th 2006, http://www.macroscan.com/cur/sep06/cur110906Nutrition_Concerns.htm

[2] Rama Baru, "Abdicating Responsibility", *Seminar*, No 537, May 2004.

[3] Rama Baru, "Abdicating Responsibility", *Seminar*, No 537, May 2004.

[4] Jayati Ghosh, Rent a Womb: An Indian Expert, *Deccan Chronicle*, 11 November 2006.

[5] Ranendra Kumar Das and Veena Das, The interface between mental health and reproductive health of women among the urban poor in Delhi, Trivandrum, Achutha Menon Centre for Health Science Studies, Sree Chitra Tirunal Institute for Medical Sciences and Technology, 2005.

[6] Cf. R.Thara and V.Patel *Women's Mental Health: A Public Health Concern*, Regional Health Forum WHO South-East Asia Region(Volume 5, Number 1)

[7] Zamrooda Khanday; Negotiating reproductive health needs in a conflict situation in the Kashmir Valley, Trivandrum, Achutha Menon Centre for Health Science Studies, Sree Chitra Tirunal Institute for Medical Sciences and Technology, 2005.

[8] Prabal Mahato, cf. Zamrooda Khanday; Negotiating reproductive health needs in a conflict situation in the Kashmir Valley

[9] Extracted from online factsheet of Bhopal Gas Peedit Mahila Stationery Karmachari Sangh, Bhopal Gas Peedit Mahila Purush Sangharsh Morcha, www.bhopal.net/march.

[10] Extracted from paper by Shashi Sail, "Witch Hunting in India," written for the Second Shadow Report on CEDAW.

[11] For example, all the First Referral Units (FRUs) in Madhya Pradesh and 118 FRUs in Uttar Pradesh lacked blood transfusion facilities Report of the Comptroller and Auditor General, Govt. of India, 2001

[12] RCH II *Plans of Implementation*, 2003, p.17.

[13] Source: Deepak Charitable Trust

[14] Das, Dey, Bhatt and Patel, no date.

[15] UNFPA State of the World Population 2003

[16] Editorial, *Economic and Political Weekly*, August 24, 2002.

[17] P. Sainath, Clouds of despair: The poor and the permanent 'drought' *The Hindu*, Sunday, August 11, 2002.

[18] Raghav Gaiha, "Does the Right to Food Matter?" *Economic and Political Weekly*, October 4, 2003.

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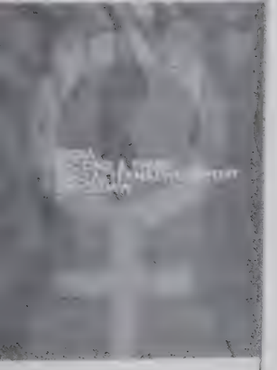
[20] ibid

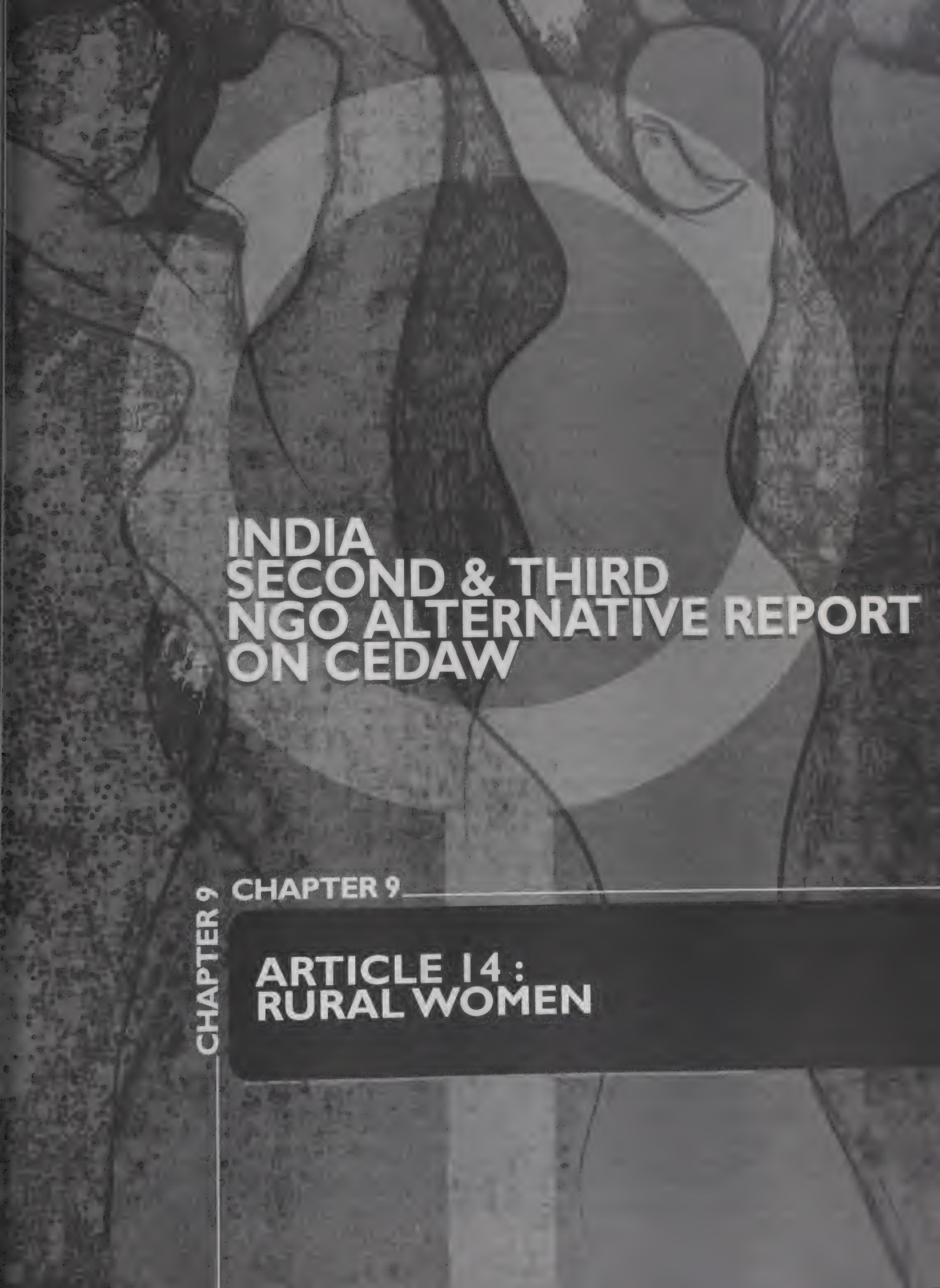
[21] Other goals include the promotion of marriage at a lower age for girls, and compulsory and free education for all up to age 14; complete registration of all births, deaths, marriages, and pregnancies; and prevention of communicable diseases (NPP 2000:3)

[22] IIPS & ORC Macro, 2001

[23] Study report of Johns Hopkins University - www.jhpiego.org/pubs/TR/tr516sum.htm

[24] This section extracted from Raghav Gaiha, "Does the Right to Food Matter?" *Economic and Political Weekly*, October 4, 2003.





INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 9

CHAPTER 9

ARTICLE 14 : RURAL WOMEN



RURAL WOMEN

In what is a predominantly rural economy, rural women in India contribute roughly 55 to 66 percent of the total labour in overall farm production. There are areas where their share is even higher. According to an FAO fact sheet:

> "In the Indian Himalayas a pair of bullocks works 1064 hours, a man 1212 hours and a woman 3485 hours in a year on a one-hectare farm, a figure which illustrates women's significant contribution to agricultural production."

Women's participation in agricultural labour ranges from preparing the land to post harvest operations, with a concentration in seed selection, storage, transplanting, weeding, harvesting, post harvest operations in most areas. Management of livestock and dairying are also areas with a large participation of women, accounting for 93% of total employment in dairy production and performing a range of tasks from collecting fodder, collecting, processing and composting dung, and carrying it to the fields. Women also prepare cooking fuel. In forest areas, although there are variations between tribal and non tribal communities, one fairly common form that the division of labour takes is in the collection of non timber forest produce and timber, with non timber forest produce, like tendu leaves and sal providing livelihood to communities. And this is work that women are responsible for.[1]

> In one estimate, women account for 90 per cent of all those engaged in transplantation. They also make up 76 per cent of those sowing seeds and 82 per cent of people transporting crops from field to home. They are a third of the work force that prepares the land for cultivation. And between 70 and 90 per cent of those involved in dairying.[2]

9.1. PREVALENCE OF THE PROBLEM

Although roughly one fifths of all rural households in India is female headed, few women hold titles to land. Even in land-owning households, they do most of the work on the farm, but are not seen as farmers.[3]

Given women's contribution to the agrarian economy, the major issues confronting them today is the lack of titles to land, the lack of access to credit, and the lack of access to decision making in rural economies. Each of these issues is aggravated by the fact of vulnerability arising from social exclusion - especially for dalit and adivasi women - practices of violence and the impact of structural adjustment on the rural economy. The grossly diminished access to health in rural areas is cause for grave concern. The rise in cases of atrocities against dalit and adivasi people has reached alarming proportions:

> **September 29, 2006, Maharashtra, India**
>
> On September 29, returning home from a day's work in his field, Bhaiyalal saw a mob going towards his house. He saw people dragging out his wife, Surekha, 40, two sons, Sudhir, 21, who is partially blind, and Roshan, 19, and daughter Priyanka. Terrified, he ran away and tried to get help. He has named several people he saw that evening. The mob allegedly stripped the victims, and assaulted them with axes and other weapons and killed them. ..
>
> There is a history of discrimination in this village. About 100 km from Nagpur, Khairlanji has about 125 houses; a majority of the residents belong to the OBCs, mostly from the Kunbi and Teli communities. One of the three Dalit families in the village, the Bhotmanges, came to this village from Ambagad in the Tumsar taluka about 16-17 years ago. Bhaiyalal does not have a legitimate housing plot and lives in a single room hut. There is no electricity either. He owned five acres of land. A dispute arose over it when villagers wanted a road to go through it...
>
> The villagers have always resented the fact that the Bhotmange children were educated. Priyanka was on the merit list in the tenth standard examinations two years ago. "She had dreams of joining the police," said Bhaiyalal. Roshan was also studying in college.[4]

9.1.1. Women's Access to Land[5]

Historically women have been central to struggles for land and struggles against feudal landownership in different parts of India - Tebhaga in West Bengal and Telangana in Andhra being symbols of women's resistance. Yet, today, women's relationship to land - in terms of ownership, control and/or independent access is tenuous. West Bengal is one state where land reforms have been assiduously implemented, and care was taken to write joint titles in the name of husband and wife into the programme itself. The problems women face in accessing land in this state could serve as a pointer for the rest of the country as well.

Although land reforms were set into motion decades earlier, it was found that pattas [titles] were only given in the name of the male head of household. This was in large measure because beneficiaries, according to the policy had to be identified on the basis of their direct contribution to sowing, *ploughing*, weeding and harvesting. There is a social taboo against women wielding the plough in West Bengal, so they could not fulfil the four criteria. In 1992, after an amended government order was passed underlining the issue of joint pattas, women were identified, but even here, it was primarily women in distress situations. Adult unmarried women were seen as dependents. Random surveys showed that there were discrepancies between the official record and actual distribution of land, where women were shown as beneficiaries on paper but were not in fact given title. In Bankura district of West Bengal, nearly 800 pattas were distributed on joint title but not a single one included the name of the spouse.

In terms of women's access to land, the major factor that motivated land transfers was dowry. This sometimes involved the sale of land with standing crop or depending on the tenurial category, the mortgage of land. The payment is then not ploughed back into agricultural land but into transport or petty business.

"We want land in our own name", say women

The reasons:

(1) Old age security if sons do not look after them.

(2) The predominant notion that their daughters can inherit land if the mother has it in her own name.

(3) Women can use the property to pay for their daughter's marriage in the absence of the husband, as sons usually inherit the property and may be unwilling to pay for their sister's marriage.

(4) Lack of security in the matrimonial home as women do not have any legal right to property, be it land, cattle or house.

(5) Given the rise in cases of divorce, desertion, and physical violence against women by the husbands, the women expressed the urgent need for secure shelter, be it a legal right to the homestead of their parents, land to cultivate, or a shelter home.

(6) The younger women, especially those who have already been divorced, deserted or have remained unmarried, preferred to be given a share in the parent's property be it land or house or both (given the asset structure of the household) rather than pay dowry to their in-laws.

(7) Women felt that they should have independent access to ownership of productive resources to be able to counter the system of dowry, as well as to free themselves of a dependent status all their lives.

(8) The women pointed out that apart from ploughing, they participate in all agricultural operations. Women who belonged to peasant households but did not have to work as agricultural labourers also pointed out that they bear all responsibility for the agricultural produce once it is brought home from the field, yet they are not considered agriculturists or cultivators and only their husbands are recorded as cultivators. They felt that ownership in their direct name would perhaps make a difference to their



access and control over the resources of the household. Women agricultural labourers pointed out they do not even get equal minimum wages with the men. Women said that they are capable of ploughing, but are not allowed to. They also pointed out that not all men from households of agricultural labourers who have received land allotments plough the land themselves. They hire the plough which comes with a ploughman. Yet, even those men were considered as tillers, but not the women.

(9) While women do not have ownership rights recorded in their name, they however bear the responsibility of returning debts incurred by their husbands in lieu of land mortgage, etc.

(10) Women are often not informed about these transactions the husband enters into with the assets of the family. The women felt that this situation could be held in check if they as owners were to be signatories to the transaction.

(11) On the question of joint titles the women pointed out rightly that the majority of them did not know of such a provision, and even those who knew about it were under the impression that if as couples they were to separate they would no longer have access to the joint property. While on the one hand the women felt that joint property would give them greater control over the decisions about sale/transfer/mortgage of property, on the other, they expressed their wish to own property in their single names for greater security and control.

9.1.2. Displacement and Resettlement

Development projects across the country have paid scanty attention to the needs of people, with entire villages being displaced. Coal mining, the construction of dams, the building of wildlife sanctuaries, have in the last few years posed the biggest threat to the survival and livelihood especially of indigenous adivasi and dalit communities. Displacement has meant not merely the loss of house or homestead, but land and natural resources that formed the basis of the economic survival of these communities as well. It has also meant a more deep-rooted dispossession in terms of the loss of community assets - schools, and local institutions and infrastructure around which these communities have built their lives. The quantification of relief and rehabilitation to oustees is done on the basis of a mechanical calculation that always weighs the benefit in favour of the state and/or the multinational corporation that is the prime mover. Displacement therefore, even where the terms of rehabilitation are land for land, results in a greater impoverishment of poor people. The process of displacement is often traumatic, with entire communities being asked to leave their villages in the middle of the monsoon or asked to demolish their homes themselves.

The policy, displaced women in the Narmada Bachao Andolan argue, is biased against women, because single women are not seen as independent entities, while single men are — this difference is especially evident in the case of widowed and divorced women who were seen as part of the extended family while widowed or single adult men were treated on par with families.[6]

Even in instances where there is a land-based rehabilitation policy, as with the Sardar Sarovar Project, there is a disbursement of cash compensation, which has undermined family survival, and affected women's position adversely. The cash in itself grossly inadequate is given to men, who, unable to purchase land with it, buy motorcycles or liquor instead. It is in women's interest therefore, in cases where displacement has already taken place that the displaced persons are given irrigated land with a minimum of two hectares per family, as that is the minimum that would be required to sustain the family.

9.1.3. Farmers' Suicides

Andhra Pradesh and Maharashtra have seen a spate of suicides by farmers in the last few years. By December 2004, 644 farmers from different castes had committed suicide in the Vidharbha, Marathwada and Khandesh regions. There were landless families who had leased land on a long term basis, families that had accumulated enough money to buy land after working in cities for some years, and landed families - all of which were

affected by cycles of debt, incurred to buy pesticides, fertilizers, and high yielding varieties of seeds followed by successive crop failures and more debt. Rapidly declining opportunities for non farm employment during the off farming season made survival even more precarious, driving these farmers to suicide. A majority of the farmers who died in Maharashtra were married and left families behind to cope with the debt.[7]

The fact of having to care for families, pay off debts and deal with money lenders makes women survivors extremely vulnerable to exploitation and assault.

Among the thousands of farmers who have taken their lives in the state of Andhra Pradesh, women farmers figure in large numbers. Their figures do not enter the official account because in the official reckoning, a farmer is a landed male with a title to land and women do not fit this description. There are women who have taken charge of entire families after the distress migration of adult men in the family to cities. There are others who are the heads of households despite the presence of adult men. The reason for the suicides by these women is the same. Mounting debts.

> **In a single year from August 2001 there were 311 women's suicides in just Anantapur district alone. And these were only the recorded ones. There must have been a lot more that went unreported. Close to 80 per cent of these 311 were from villages. And most of the women were from a farming background.[8]**

9.2. RECOMMENDATIONS

- Women's engagement in agriculture must be recognized adequately through the creation of real access to land and resources.
- In situations where displacement has already occurred, a consultative process must be put in place to ensure that women's voices with respect to rehabilitation are heard and taken into account.

The state must take responsibility for the spate of farmers' suicides and provide immediate relief to families that will ensure their survival in the long term, especially by pulling them out of the debt trap.

End Notes

[1] Asia's women in agriculture, environment and rural production: INDIA, SD Dimensions, Sustainable Development Division, Food and Agriculture Organisation, nd.

[2] P. Sainath, "How the Better Half Dies", *India Together*, August 2004.

[3] P. Sainath, "How the Better Half Dies", *India Together*, August 2004.

[4] Meena Menon, "He lives to see justice done", *The Hindu*, November 17, 2006.

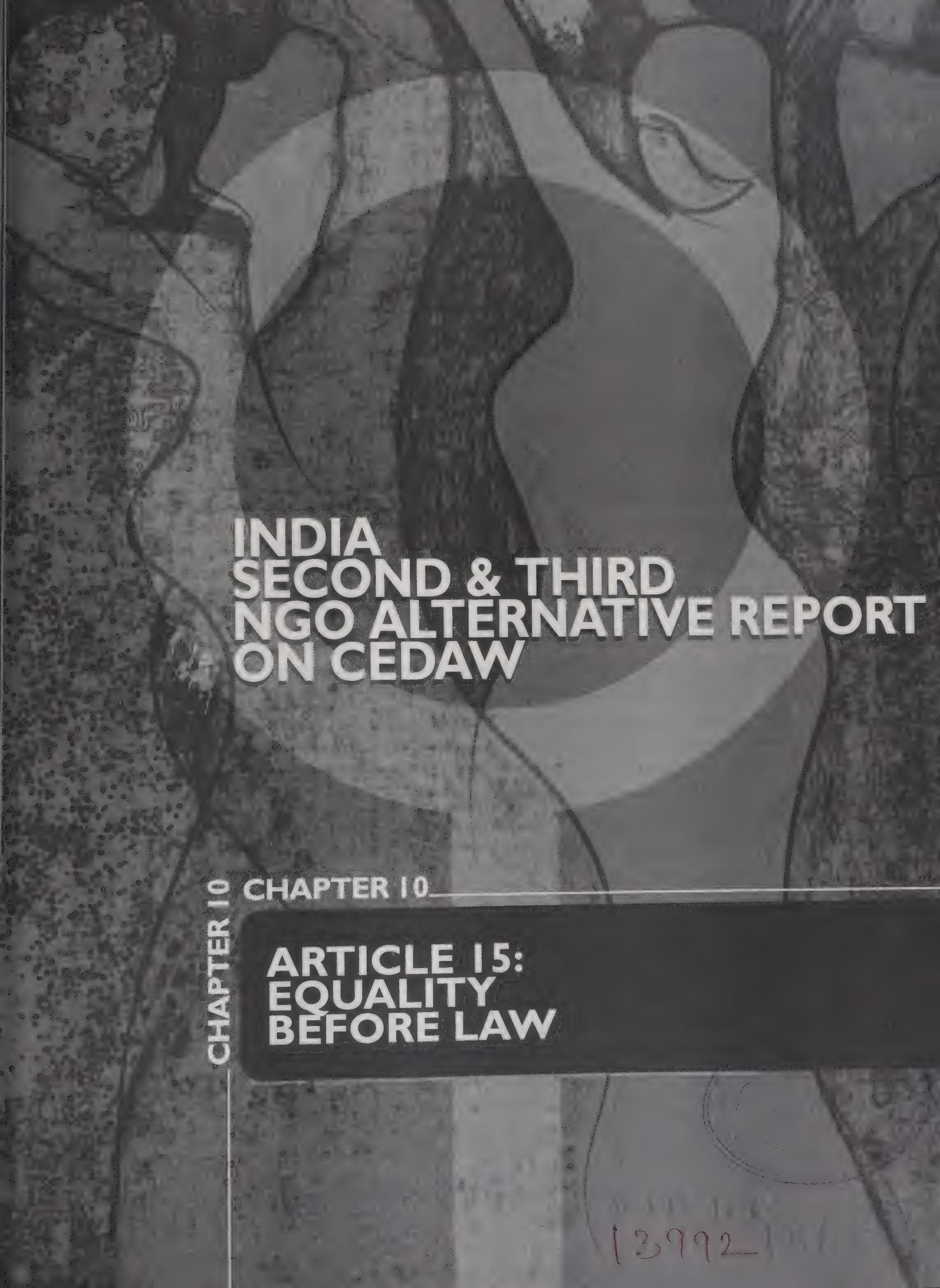
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[7] Causes of Farmer Suicides in Maharashtra: An Enquiry, Final Report Submitted to the Mumbai High Court March 15, 2005, Tata Institute of Social Sciences, Rural Campus, Tuljapur.

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CHAPTER 10

CHAPTER 10

ARTICLE 15: EQUALITY BEFORE LAW

13992



EQUALITY BEFORE LAW

This chapter will examine the right to equality in substantive terms, looking at the right against discrimination, the right to special measures and the right to equality before law.

(A) DISCRIMINATION AGAINST WOMEN

10. A. 1. PREVALENCE OF PROBLEM

The Constitution of India guarantees the fundamental right to equality and protects citizens from discrimination based on sex. Despite these guarantees, discrimination against women exists. While the Government of India report makes a mention of the protection offered by constitutional guarantees contained in fundamental rights, it does not mention that such protection does not extend to situations of discrimination by private parties. Fundamental rights may not be availed against private parties and non-State actors, and this remains a fundamental limitation. Since the Government has failed to enact an anti discrimination legislation that can address non-State discrimination.

Further the Government mentions Directive Principles of State Policy as a source of State obligation. However, since such principles remain non-justiciable they are not a source of rights for women.

The existence of gender based violence and the poor legal framework that fails to tackle such violence remains a source of discrimination against women. Personal laws continue to place women in unequal positions vis-à-vis men.

(I) Domestic Violence

Women are victims of dowry based violence and non-dowry violence within the four corners of their home.

(a) Criminal Law on Domestic Violence: Section 498-A, IPC

The existing legal regime governing domestic violence is that of criminal law, specifically Section 498-A of the Indian Penal Code. The provision criminalizes the conduct of cruelty towards a married woman by her husband and her relatives. At the time of its inclusion in 1983, the provision made significant conceptual advances in law in its recognition of non-dowry related violence and thereby expansion of the parameters of violence. The text of the provision has to a large extent rejected traditional notions of violence interpreted as only physical violence and specifically recognizes mental cruelty as an offence under the law. It must, however be kept in mind that Section 498-A is restricted to the marital situation and does not recognize domestic violence perpetrated on women in relationships other than marriage.

More than 20 years have passed since the enactment of the provision. However the rate of conviction under the provision remains abysmal.

The challenges in the implementation of Section 498-A lie in the following directions:

(1) The Courts and Police do not always recognize situations of 'mental cruelty. Often situations of non-physical abuse are dismissed as trivial, sometimes even false, complaints. This is further compounded by the difficulty in proving cases of mental cruelty. The Supreme Court has laid down in *Mohd. Hoshan, A.P. v. State of A.P.*[1] that cases of mental cruelty need to be decided on a case to case basis paying close attention to the facts of each case. "Various factors will need to be kept in mind including social background, environment, education, etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty."

So far, the courts have failed to formulate guidelines on mental cruelty that will both reflect expansive and progressive notions of violence and the differing situations of women facing violence.

(2) Section 498-A has also been subject to allegations of misuse by women. Advocates of the 'misuse' arguments claim that this law is being used by women to harass and blackmail the husband and his family. Judges of the Supreme and High Court have been responsible for such arguments. However, a clear understanding of what that 'misuse' entails does not precede such concerns of 'misuse'. Such arguments of widespread 'misuse' of the law are not based on any scientifically established data or study. In effect, 'misuse' arguments tend to 'prejudge' a case without a proper hearing. In doing so, they hamper the effective implementation of the law. The Government has done little to prevent such allegations of 'misuse'. The Mallimath report brought out by the Ministry of Home Affairs has itself come to conclusions of misuse of the law without adequate substantiation. Based on such inadequate studies, the Government has introduced a Bill - the Criminal Law Amendment Bill 2003 - that seeks to make this section compoundable in law, rendering it ineffective. Making such a law compoundable would have the unfortunate effect of detracting from the seriousness of the crime of domestic violence. Already, the State of Andhra Pradesh has successfully enacted a law to such effect, reducing the possibility of conviction under the law.

(3) There is also an absence of State accountability towards the prevention of domestic violence. This accountability extends beyond the provision and implementation of the criminal law. It should include the provision of services of shelter, legal aid and medical aid on a priority basis to women facing violence. In the absence of such services, the criminal law can do little for the woman.

b) Dowry related Violence

Section 304-B of the Indian Penal Code makes dowry deaths an offence under the law, punishable with imprisonment, which may extend from seven years to life imprisonment. In the recent years, there has been an increasing reluctance to implement the dowry death provision in all seriousness on the part of the judiciary and law enforcement agencies. This has been due to a unproven fear of misuse of such provisions by women. To quote from former judge of the Supreme Court Mr. KT Thomas :

> "A number of prosecutions have been launched against husbands and in-laws of brides who have committed suicide within seven years of marriage...But there have also been instances when the above provisions were misused. Old women, young sisters-in-law and even married sisters-in-law, besides teenaged brothers and sisters-in-law were made accused in such cases at the instance of the members of the bereaved families. While hearing a good number of such cases, I gained the impression that it was not rare that brides committed suicide on account of depression or related causes on account of other mental illness. The parents of the deceased chose to prosecute not merely the husband; those accused included the aged father-in-law and mother-in-law and also young sisters-in-law who were either of marriageable age or in their adolescence."[2]

The reluctance to implement the law also arises from the notion that the burden of proof after the introduction of special presumptions is 'reverse of the normal', placing an unjust burden on those accused.

The site of the violence in dowry deaths is the family. Experiences of women reflect the fact that they are subject to violence within the household by members of the household. In our experience as lawyers dealing with women suffering from domestic violence, the harassment and murder of women has often been initiated and perpetrated by the in-laws and family members of the husband. It is for this reason that Section 304-B of the Indian Penal Code are intended to punish *every person* who has committed the crimes of harassment and violence against women. The law is meant to punish perpetrators of violence, irrespective of how they may be related to the victim or how old they may be. The special presumption contained in Section 113-B of the Indian Penal Code involves shifting of the burden of proof; it is not the reversal of the normal system of proof. Allegations of 'misuse' without substantiation whittle down the efficacy of law enforcement, making it an issue that should be addressed at the earliest.



The Parliament has also enacted a specific legislation to address the problem of dowry deaths. **The Dowry Prohibition Act of 1961** and accompanying rules penalizing the giving and taking of dowry. Section 3 punishes the giving, taking and abetting the giving and taking of dowry with imprisonment of not less than five years and a fine of not less that Rs 15,000 or amount of the dowry whichever is more. However, the Court may for adequate and special reasons reduce the term of imprisonment for less than five years. The punishment is further mitigated in a case of demand for dowry. Section 4 of the Act provides that a Court may award a sentence of imprisonment for less than six months.

The absence of deterrent punishment is further compounded by the poor enforcement of the Act. Section 8-B empowers State Governments to appoint dowry prohibition officers. The appointment needs to be accompanied with legal trainings and gender sensitization exercises for such officers. Most State Governments have not paid heed to aspects of implementation of the Act.

(II) Sexual Assault

Existing law on sexual assault is moulded in Victorian traditions and fails to capture the reality of sexual abuse faced by women in India. The only change in sexual assault law is reflected in certain limited amendments to evidentiary provisions of the law. Existing legal provisions in the Code are restricted to punishing the offence of rape as the most extreme form of sexual violence against women. Women's groups and lawyers have strongly voiced the need to punish every instance of sexual violence against women, and not just the most extreme forms of such violence. Hence the need to define the offences of sexual violence against women in the broader terms of 'sexual assault'. The recent *Sakshi* judgement by the Supreme Court represents another failed opportunity to redefine sexual assault in terms that will reflect the experiences of women. The Government is yet to table a law on sexual assault or bring substantive reform into the existing Indian Penal Code.

Women and girls form the majority of the victims of sexual violence. There are, however, significant differences in the nature of sexual assault perpetrated on minor girls. In addition, the law treats adult women and minor girls differently. Therefore, any reform of the law on sexual assault must consider the possible impacts and requirements of such a law on the separate category of minor girls.

Marital rape remains unpunished by the law. Marital rape, unless when under judicial separation or when the wife is under 15 years, goes unpunished by the law. This is reflective of the patriarchal approach of the existing laws criminalizing sexual assault. The wife is viewed as the property of the husband, and thereby sexual violence perpetrated on the woman within marriage is overlooked.

The State has failed to recognize the need for special measures to protect women from sexual violence in situations similar to the communal violence and genocide in Gujarat. To date there has been no conviction of sexual offenders in the State sponsored genocide. The State has also proven to be ill-equipped to deal with situations of mass based violence in terms of providing immediate relief and speedy justice to women.

(III) Sexual Harassment

In 1997, the Supreme Court of India in the *Vishaka v. State of Rajasthan* judgement directed Central and State Governments to adopt suitable measures including legislation on sexual harassment at the workplace. The judgement itself mentioned CEDAW as the source of such law, but the Government has not thought it fit to see this through. To date, there is no such law. The law proposed by the Government has not seen the light of the day. The State has also still to consider measures in law and policy to make cities safer for women in the light to growing cases of violence against women.

Note must be made of some progressive decisions on sexual harassment as in *Rupan Deol Bajaj* in the year 1996.

(IV) Sex Selection

The practice of sex selection and sex selective abortion remains a prominent mode of gender based discrimination. While there are laws on the issue (the Medical Termination of Pregnancy Act and the Pre-conception and Pre-natal Diagnostics Technique Act), it is important that such laws, which are essentially criminal in function, should not criminalize the woman. Laws that police and regulate the woman, often to the exclusion of her family members and societal influences, fail to recognize the pervasive influence of patriarchy on women's lives and their inability to make choices. There is therefore an urgent need to decriminalize women under such laws.

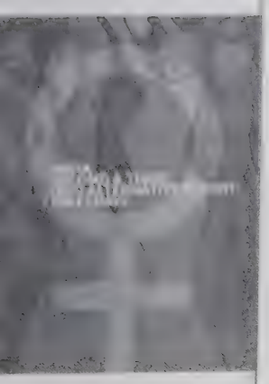
10.A.2. CRITICAL AREAS OF CONCERN

- The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.
- The Government of India has failed to enact a comprehensive anti-discrimination law to protect women against unequal treatment in all spheres. Such a law is necessary to give effect to Constitutional guarantees of equality and towards the practical realization of the principle of equality. The Common Minimum Programme of the UPA Government, elected in May 2004, promises the enactment of a law to prevent gender-based discrimination. To date, no such law exists.
- Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.
- In India, the right to equality for women has been primarily interpreted through case law, resulting in varying interpretations and sometimes unfavourable interpretations for the rights of women. In the interpretations of Article 15(1), the use of the word 'only' in this provision has enabled courts to segregate sex from gender and uphold blatantly discriminatory legislation. A classical example is a case where airhostesses were seeking parity with male assistant flight pursers. Although the Supreme Court held that the rule terminating the employment of airhostesses on first pregnancy was patently unconstitutional, it validated the discrimination because such discrimination was on the basis of recruitment and sex, and not sex alone.[3] The judiciary has also been reluctant to examine the controversial area of personal laws and hold provisions violative of the right to equality.
- The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. The forms of gender-based violence prevalent in India include domestic violence, dowry linked violence, sexual assault, sexual harassment and sex-selective abortion. An analysis of the Government's performance would be incomplete without an indepth evaluation of the legislative lacunae in the area of gender based violence and discrimination.

10.A.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The core objective of CEDAW is towards the elimination of discrimination against women in all spheres of life. Article 1 defines 'discrimination against women' for the purposes of the Convention. Article 1 states

"For the purposes of the present Convention, the term 'discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."



Article 2 enumerates State obligation towards the elimination of such discrimination. State obligation under this provision includes:

- To embody the principle of equality of men and women in their national constitutions and legislations and to ensure the practical realization of this principles;
- To adopt legislation to prohibit the discrimination of women;
- To establish legal protection of rights of women on an equal basis with men and establish competent national tribunals and for a that will protect such rights;
- To refrain from the practice of such discrimination and to ensure all public authorities are in conformity;
- To eliminate discrimination by persons and organizations;
- To modify existing laws, customs and practices that constitute discrimination against women.

The CEDAW Committee has identified Article 2 as part of the core commitment of State obligations under CEDAW.

The Constitution of India contains guarantees of equality, which are promised to citizens via fundamental rights. Since the right to equality is a guaranteed fundamental right, it serves to protect citizens from arbitrary State action. The core of the equality doctrine of the Indian constitution is contained in Article 14. Article 14 is composed of two prongs - '*equality before the law*' and '*equal protection of the laws*', and the object of the Article is to ensure fairness and equality of treatment. It strikes at the arbitrariness of State action in any form. Specifically, Article 14 prohibits class legislation and unreasonable classification for the purpose of legislation. Two conditions need to be met to pass the test of 'reasonable classification'. (i) that the classification is based on intelligible differentia which distinguishes persons or things (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The Constitution of India also makes particular mention of the principle of non-discrimination based on sex. Article 15(1) protects citizens from unequal treatment and injuncts the State from discriminating against any citizen on grounds of *only* sex, among other grounds. Article 16(2) of the Constitution of India prohibits discrimination on grounds of sex in matters of employment or office under the State. Although the ambit of this Article is more limited in scope than Article 15(1)[4], it is equally binding on the State to prohibit discrimination on grounds of sex in the specified field of State employment. The Constitution of India makes the right to non-discrimination against sex non-negotiable and thereby, both the Constitution and the courts are expected to ensure formal equality between the sexes.

The Constitution is also aimed at eliminating historical disadvantage of women through the principle of substantive equality. Article 15(3) enjoins the State to take special measures, legislative and otherwise, to secure the advancement of women.

The Domestic Violence Against Women (Prevention and Protection) Act, 2005 drafted by the Lawyers Collective Women's Rights Initiative recognizes in no uncertain terms that women have the right to live free of violence. It recognizes a broad spectrum of violence including physical, sexual, verbal and emotional and economic abuse. This civil law on domestic violence is of an emergency nature. The object behind such a law is to provide recognition of the inequality in situations of the perpetrator and the victim and the urgent need for immediate though temporary relief to the victim. The 'stop violence orders', in the form of protection and residence orders, under the law actualizes this recognition, enables the woman to equalize the skewed power balance by providing first a violence-free space to negotiate from. In India, the prominent manifestation of domestic violence is first for the woman to be a prisoner of the house and then to be thrown out of the same. Any law needs to address this phenomenon of depriving women of their right to reside in a shared household. This effort is also a logical consequence of efforts to codify common law,

which states in no uncertain terms that a woman has the right to reside in the matrimonial home under the law. Under the law, it is for a judge to decide the continuation of this right of residence. In such ways, the civil law on domestic violence seeks to give effect to the guarantee of immediate protection from domestic violence. This Bill seeks to provide a host of different reliefs to the woman - including protection and residence orders, custody and compensation orders, monetary relief and interim and Exparte orders. The LCWRI law succeeds in introducing two new concepts in law. The first is the role of service providers, primarily NGOs and the second is the role of protection officers under the law. A court of law is permitted to take the assistance of accredited NGOs to discharge its functions. This provision also serves the dual functions of allowing for coordinated responses towards domestic violence involving non-State actors and protecting such actors from retaliatory legal action in the course of their work done in good faith. A significant conceptual advance in the civil law is the provision and appointment of protection officers, who are full time persons employed and attached to the courts. They are accountable to the court for the discharge of their functions, and thereby facilitate access to the court. This innovation allows for infrastructure to improve access to justice and thereby realizes the positive content of the right to be free of violence. Based on inputs from women's groups, this law also includes State responsibility towards victims of domestic violence and their obligations to provide adequate shelter, medical and legal aid to such women.

Most importantly, the civil law on domestic violence runs in parallel to the criminal law provision contained in Section 498-A of the Indian Penal Code. The civil law drafted by the Lawyers Collective is one half of a concerted legal strategy to combat domestic violence consisting of a judicious mix of both civil and criminal law remedies. It is for the woman to determine her choice of law. Moreover, the criminal law remedy is deferred upto the point where a breach of the protection order occurs. It is upto that point that the domain of the civil law extends.

The Domestic Violence Against Women (Prevention and Protection) Act, contains specific methods to empower and actualize the rights guarantees present in the law itself. It contains methods to monitor the implementation of the law through the offices of National and State Co-ordinators for domestic violence and systems of reporting. It also mandates the State to disseminate information on the law. It does not allow for exclusion from the protection of the law on grounds of different personal laws. This law applies irrespective of religion and therefore emerges as a law common across communities.

B. DEVELOPMENT

10.B.1. PREVALENCE OF THE PROBLEM

The Government has failed to provide adequate social security and maintenance schemes for women. Schemes to put into effect these rights - including social security, shelter, medical aid and health care, legal aid, protection from violence and welfare - remain limited. Law pertaining to legal aid have not yet recognized the economic needs of the woman in distress. So far, only the State of Maharashtra has recognized the rights of women to free legal service. The development of women has also been greatly hampered by non-implementation of maintenance orders by courts.

10. B. 2. CONSTITUTIONAL GUARANTEES

Article 3 of CEDAW states that

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".

It is the State's responsibility to ensure the full development of its women citizens. To this end, the Directive Principles of State Policy contain certain such principles. The State must secure a social order that will

promote the welfare of the citizens.[5] As principles of policy, the State must ensure equal remuneration irrespective of sex, adequate means of livelihood[6], and maternity relief.[7], equal justice and legal aid.[8] However, such principles are non-justiciable in a court of law. There is therefore an urgent need to codify these principles into law. To an extent, the recognition of the fundamental right to education (Article 21-A) ensures the development of women citizens.

C. SUBSTANTIVE EQUALITY AND SPECIAL MEASURES FOR WOMEN

10.C. 1. PREVALENCE OF THE PROBLEM

Article 15(3) of the Constitution of India allows positive measures for women by the State and is an exception to the rule against discrimination. Under this provision, the State is not prevented from making any special provision for women and children. The rule against discrimination in Articles 15 and 16 does not prohibit special treatment of women.

There have however been several unfortunate interpretations of the substantive equality provision. Some judges have held that the constitutional mandate against discrimination on grounds of sex is infringed only where the females would have received same treatment with males *but for their sex*[9]. Therefore, the preferential (though adverse) treatment of women was upheld in *Air India Cabin Crew Association v. Yeshaswinee Merchant*[10]. The plight of airhostesses, and indeed women, continue to depend on the vagaries of interpretation of the Apex Court, as seen in the *Air India Cabin Crew Association v. Yeshawinee Merchant*[11] in 2003. The Court mandated a special retirement age of fifty for air hostesses, continuing the logic of the precedents. Case law indicates that the Special Provisions Clause has been used to justify the regulation of female sexuality based on the *"weaker sex"* approach to gender issues. An example of this approach may be seen in the cases where the provisions dealing with adultery have been challenged in the Supreme Court.[12]

It can be said that Articles 15 and 16 prohibit discriminatory treatment on grounds of sex, but not preferential treatment of women, which is a positive measure in their favour. The State is thus constitutionally obligated to encourage the advancement of women in society, in addition to protecting them from negative discrimination. Judges of the Supreme Court have emphasized State obligation towards women in *Madhu Kishwar v. State of Bihar*[13] stating "it was imperative for the State to eliminate obstacles, prohibit all gender based discriminations as mandates by Articles 14 and 15 of the Constitution of India." We hope for such positive interpretation of the special measures provision by the courts.

It is yet another matter, that not many post independence laws or judicial decisions can trace their origins to this Special Provision. The 73rd and 74th constitutional amendments making reservations for women in panchayats and municipalities form part of the Constitution itself and cannot be attributed to the Special Provisions Clause. The Women's Reservation Bill, which was mooted to increase the political participation of women, has not seen the light of day. It merely finds mention in the Common Minimum Programme. When we speak of efforts to increase political participation, the two child norm mooted by both the Centre and States must be mentioned. Increasingly, the State has been using coercive measures including population policies and the two child norm with the attempted objective of improving the quality of political participation. However, such norms serve to adversely affect women by regulating their sexuality and reducing their opportunities towards participation. Such norms do not also adequately grasp the reality of women's lives and the impact of patriarchy on them.

The area of labour laws has seen an increase of enactments that recognize the inequality of women and they attempt to rectify the situation. Examples of such special legislations include The Equal Remuneration Act, The Maternity Benefits Act, The Factories Act. The Contract Labour (Abolition and Regulation) Act, The Beedi and Cigar Workers (Conditions of Employment) Act and the Mines Act. Such acts attempt to regulate the conditions of employment for women. However, despite best intentions, it has been seen that the

provision of such special provisions for women has often turned detrimental for them because of the reluctance of employers to employ. In such cases, beneficial provisions have actually ensured that women are left out of the workforce. The practical implications of this implies very little State support for such women. There is also a lack of State accountability towards women with regard to the provision and implementation of such substantive equality provisions, which may be good on paper but have little practical worth in practice.

D. EQUALITY BEFORE THE LAW

10.D.1. PREVALENCE OF THE PROBLEM

Article 15 of CEDAW assures equality before the law to all women. However, the legal inequality towards women is inbuilt in our system of laws. Deeply entrenched and pervasive patriarchial attitudes on the part of the judiciary and law enforcement only worsens the situation.

a) Personal Laws

First among unequal laws, is the system of personal laws. Provisions in the personal laws of the different communities permit differential and unequal treatment of women. Personal laws continue to be discriminatory in their legislative content. It was as late as 2003 when Christian women realised the right of divorce equal to men through an amendment to the Indian Divorce Act. However, change is few and far between. Women continue to be discriminated against through personal laws. Muslim personal law allows a man to practice polygamy and marry four times. A woman can, however, marry only once. The practice of triple talaq allows a man to unilaterally and unreasonably divorce his wife, without a semblance of fairness. Under Parsi and Hindu law, The range of grounds available to a woman for divorce or judicial separation vary greatly. Chastity of the woman remains a precondition for the provision of maintenance to the woman.

The provision for the restitution of conjugal rights can be very heavily loaded against the woman. A woman, who wishes to stay apart from her husband for personal reasons, can be ordered by court to provide companionship to her spouse. This situation can be particularly dangerous and demeaning when she is a victim of domestic violence.

While the Gita Hariharan judgement was instrumental in recognizing the woman' right to guardianship under Hindu law, the law has not adequately recognized the woman's role as a guardian. Other issues that are important for women, but are so often neglected, include the right to residence, the right to property, mahr and stridhan, and custody of children.

The debate on personal laws and uniformity has often been fought on the terrain of women's rights. In the controversial Shah Bano case, what was at stake was the right or a divorced Muslim woman to claim maintenance from her former husband under section 125 of the Criminal Procedure Code ("CrPC"). In reply to her claim, her husband squarely stated that to compel him to pay maintenance would be in conflict with his personal laws. The Supreme Court was presented with an opportunity to decide the issue as an "equality " issue. It failed to do so. Instead, it launched into a debate on the content of the Koran and was at pains to explain that the Code was not in conflict with the Koran. The Supreme Court went to great lengths to avoid the constitutional question, namely, would a personal law, which discriminated against women, be recognized after the coming into force of the constitution? The protest over the *Shah Bano Case* thus ended up being a protest over the authority of the Court to pronounce on the interpretation of the Koran, rather than a straightforward protest over the right of women to equality. The debate had overtones of those that had taken place in 1937 over the Muslin Personal Laws Application Act 1937, passed at a time when the British through the Regulation Acts had accepted the fact that laws applied by virtue of religion and not citizenship or territoriality. A similar debate has ensued on the issue of abolition of the triple talaq practices.

The debate on the need to reform discriminatory personal laws is often thus turned into a heated controversy on the preservation of culture and religious identity, while the issue of women's equality takes a backseat.



The judiciary has displayed its reluctance to view personal laws under the lens of fundamental rights and the right to equality in Articles 14 and 15 of the Constitution. In *State v. Narsu*[14], the rule of Muslim Law, which permits polygamy for men but not for women, was held to not offend Article 15(1). It was held that personal laws were outside the ambit of Article 15. This verdict of the Bombay High Court is highly questionable and has been severely criticised. The enforcement of personal laws ought to be covered by Article 15 as it involves 'State action'. Therefore, if the discriminatory provision in question is not for the protection or benefit of women, it should not escape from the bar under Article 15(1). This discriminatory trend of judicial interpretation has at least been arrested by developments like the 1995 Supreme Court decision in *Sarla Mudgal v. UOI*[15]. In *Sarla Mudgal*, the man was not allowed to change his religion in order to practice polygamy and marry a second time. Therefore, the rights of the wife were protected.

India's reluctance to reform its personal laws to make it equal for women extends to the international sphere and its obligations under CEDAW as well. While Article 5(a) and Article 16(1) of CEDAW emphasize the Government's obligation to eliminate cultural practices and customs that discriminate against women (which include personal laws), the Government has declared its inability to do so without the consent and initiative of individual communities.[16]

It is useful to spend a moment analyzing this declaration and reluctance to reform personal laws, as an indicator of the lack of State commitment towards women.

- The declarations made by the Government of India are vague and ambiguous in content. The Government of India has made its obligations under Articles 5 (a) and 16(1) subject to an undefined and indeterminate 'policy of non-interference'. Although such a policy finds mention in the text of the declaration, the meaning and contents of such a policy has not been outlined anywhere. It is, therefore, difficult to understand the State's objective and understanding of such a policy.
- Further, the 'declaration' also does not make clear what it means by 'community' and if such a 'community' is religious, political, social or of some other undefined nature. It is also uncertain if the Governments will restrict its policy to taking the consent of 'minority communities' as evident from the India country report or if it will extend this to the majority Hindu community as well.
- It is also important to note that there are no standards outlined for the taking of such consent from such communities. In the absence of clear and well-defined standards and policy to take consent, the practical consequences of such action can be chaotic.
- The vague and ambiguous nature of the declarations contravenes the requirement that derogations to multilateral conventions, particularly human rights conventions, ought to be specific. The Government ought to have outlined a clear and reasoned policy for its immediate non-compliance and stipulated a time period for the expiry of such policy and the full implementation of its obligations. The 'declarations' of the Government of India lack a specific time period within which compliance with CEDAW obligations will be achieved. Thereby, they disregard the requirement of specificity and are also evidence of the fact that the Government has not made these statements with the understanding of its responsibility towards women under CEDAW.

It is submitted that the State has abdicated from its constitutional responsibility towards women, by making such obligation subject to the affairs of indeterminate communities and the taking of their consent. The Convention (CEDAW) is a treaty signed by the Governments of sovereign states and bestowing obligations and commitments only upon Government of those states and not on private actors in the signatory states. For a reservation or declaration to remain compatible to the convention, it is for the States to take into consideration the overall effect of a group of reservations, as well as the effect of each reservation on the integrity of the convention, and specify the manner of implementation of such obligations. These declarations do not do so. The Human Rights Committee in General Comment 24 has laid down that specificity and

transparency are requirements for acceptable reservations and declarations, so it may be clear what obligations of human rights compliance have been undertaken by the State [17]. Accordingly, such ambiguous declarations ought to be severed and their legal effect rendered void.

In the alternative, even if such a declaration is found valid in law, the State has not displayed any commitment towards the reform of personal laws even with the consent of the specific communities. The State has neither identified nor entered into a dialogue with such communities to make personal laws gender just.

b) Property and Residence Issues

The law does not adequately recognize property rights of women. Under Hindu law, daughters are not granted coparcenary rights in the ancestral property. Instead male members of the family are given a complete right at birth to such property. Women also lack a full right of residence in their parental dwelling house. The law must also be reformed to restrict the power of a person to bequeath property by way of testamentary disposition to the detriment of women. [18]

There have been attempts to deny women domicile and residence status. The Jammu and Kashmir Government came close to legislating a patently unequal law for women. The Jammu and Kashmir Permanent Resident (Disqualification) Bill 2004 sought to disqualify women from their status as permanent residents of the State if they marry a non-resident of the State.[19] It denied women their political and property rights in the State, including the right to vote and contest in elections, to hold, inherit and acquire property and to claim preferential treatment in Government jobs and scholarships.[20] The State Government claimed the right to legislate in such manner from the State Constitution and Article 370 of the Indian Constitution. While the Bill was defeated in the State Assembly after several months, it remains a reminder of the transitory condition of women's rights.

10.2. RECOMMENDATIONS

- The Government must recognize the seriousness of the crime of domestic violence and implement Section 498-A. It should discourage efforts to make the section compoundable. State accountability and the provision of services for domestic violence victims must be emphasized.
- The police and judiciary should be trained in aspects of Section 498-A. Moreover, guidelines must be adopted to help the courts decide cases of domestic violence.
- Penetration need not be a requirement for sexual assault
- Sexual assault within marriage must be punished.
- Consensual sex should be decriminalized.
- Testimony of the victim of sexual assault must be given adequate weight
- Special procedures to protect and ensure the right to privacy of the victim of sexual assault
- All assistance and legal representation to be given to the victim of sexual assault
- Compensation for the victim must be provided.
- The Government of India has failed, on several occasions, to commit to and ensure the protection and promotion of women's human rights through the full implementation of human rights conventions and treaties and national laws and policies. Primary among human rights obligations towards women is the Government's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Government has not withdrawn its declarations and reservations to the provisions of the Convention that have the effect of limiting its obligations in the important areas of equality in personal laws, marriage, reproduction, workplace and property among others. The



Government has also failed to sign and ratify the Optional Protocol to the CEDAW, despite observations of the CEDAW Committee and lobbying by women's groups. Implementing obligations under CEDAW in international law and through national laws and policies is necessary to combat the resurgence of conservative forces where women's rights are denied in the name of culture, religion and other identity-based constructs. The way to a rights-based equal legal system for women lies in the respect for and codification of the principles of CEDAW.

Endnotes

[1] (2002) 7 SCC 414.

[2] K.T. Thomas, *Women and the law*, The Hindu, 19th February 2004.

[3] Air India v. Nargesh Meerza, AIR 1981 SC 1829.

[4] Government of AP v. PB Vijayakumar, (1995) 4 SCC 520.

[5] Article 38, Constitution of India.

[6] Article 39, Constitution of India.

[7] Article 42, Constitution of India.

[8] Article 41, Constitution of India.

[9] Air India Cabin Crew Association v. Yeshaswinee Merchant, (2003) 6 SCC 277.

[10] (2003) 6 SCC 277.

[11] *2003 SOL Case No. 369, Supreme Court of India (11th July 2003).*

[12] Section 497 of the Indian Penal Code, read with Section 198(2) of the CrPC, which states that the only person who may be considered aggrieved in a case of adultery is the husband of the woman who has been party to adultery, confers upon a husband the right to prosecute the adulterer, but does not confer such a right on the wife to prosecute the woman with whom the husband has committed adultery. It also does not give the woman a right to prosecute her husband who has committed adultery. As such, in practice, while a man has criminal action against an adulterous relationship involving the woman he is married to, a woman has no such action against an adulterous relationship that her husband is involved in. In the cases of *Sowmithri Vishnu v. Union of India,* 1985 Supp SCC 137 and *V. Revathi v. Union of India,* (1988) 2 SCC 72, the Supreme Court held that these provisions were not violative of Articles 14, 15 and 21. The reasoning of the court was that the offence of adultery is an offence against the sanctity of the matrimonial home and that the offence is generally committed by the man. The underlying emphasis in these cases was on the assumption that woman can never be the guilty party in adultery, and thus that women are sexually passive, that women need to be protected. In taking a formal equality approach in these cases the Supreme Court has belittled the effect of the provision, that there is no criminal remedy to the woman where her husband is committing adultery or is sexually involved with another person.

[13] (1996) 5 SCC 125.

[14] AIR 1952 Bom.84.

[15] (1995) 3 SCC 635.

[16] The Declaration reads as follows: "With regards to articles 5(a) and 16(1) of the Convention on the Elimination of All Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent."

[17] General Comment 24, Human Rights Committee.

[18] "Property Rights of Women: Proposed Reforms under Hindu Law", The Law Commission of India, 174th Report, May 2000.

[19] *The Times of India*, March 6th, 2004.

[20] *The Times of India*, New Delhi, March 11 2004.

INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 11

CHAPTER 11

ARTICLE 16 : MARRIAGE AND FAMILY LIFE



MARRIAGE AND FAMILY LIFE

11.1. PREVALENCE OF THE PROBLEM

Conventionally in India the normative framework of right "to" marry does not reflect women's autonomy and decision making in the realm of relationship per se and more specifically in terms of marriage, the different dimensions of right to choose if, when and whom to marry. Any digression from this lead to violative situations perpetuated by the community and families (both natal and marital), thereby reinforcing the critical issues with regard to marriage viz..

- Child Marriage
- Early Marriage
- Forced Marriage
- Forcing a person to marry per se or marry a person of the family's choice
- Denying a person 's right to marry of her own free will, a person of her own choice practices
- Adultery & Bigamy

A woman's right to enter or not to enter a relationship is a human right which, besides Article 16 of CEDAW, is secured by the provisions of a number of International human rights instruments viz:

- Article 23 of the International Covenant on Civil and Political Rights (ICCPR)
- Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

In India provisions of the Indian Constitution regarding non-discrimination on the basis of sex, equal protection of the law, equality before the law and the protection of life and personal liberty, and other secular and personal laws safeguard this right. However despite the framework of national and international legal protection, this right has proved to be one of the most complex and difficult to put into practice in the socio-cultural contexts of India.

The rights of women within the family are defined by the rights granted to them under the Personal Laws. The Personal Laws are based on religion and negate the principles of equality and non discrimination on the ground of religious practices or tradition and custom. Practices like child marriage continue and will not be curbed until the registration of births and marriages is made compulsory. Forms of domestic violence from economic deprivation to dowry deaths is on the increase. At the time of dissolution of the marriage women are denied equal rights to matrimonial property, maintenance or custody of the children. Women have no power to negotiate their sexual rights, exercise their free choice to have a child or even the right to space their children.

Section 497 of the Indian Penal Code, read with Section 198(2) of the CrPC, which states that the only person who may be considered aggrieved in a case of adultery is the husband of the woman who has been party to adultery, confers upon a husband the right to prosecute the adulterer, but does not confer such a right on the wife to prosecute the woman with whom the husband has committed adultery. It also does not give the woman a right to prosecute her husband who has committed adultery. As such, in practice, while a man has criminal action against an adulterous relationship involving the woman he is married to, a woman has no such action against an adulterous relationship that her husband is involved in. In the cases of *Sowmithri Vishnu v. Union of India,* 1985 Supp SCC 137 and *V. Revathi v. Union of India,*(1988) 2 SCC 72, the Supreme Court held that these provisions were not violative of Articles 14, 15 and 21. The reasoning of the court was

that the offence of adultery is an offence against the sanctity of the matrimonial home and that the offence is generally committed by the man. The underlying emphasis in these cases was on the assumption that woman can never be the guilty party in adultery, and thus that women are sexually passive, that women need to be protected. In taking a formal equality approach in these cases the Supreme Court has belittled the effect of the provision, that there is no criminal remedy to the woman where her husband is committing adultery or is sexually involved with another person.

The Government of India in its Initial Report acknowledges this inequality within marriage and agrees that it flows from the deficiencies in the Personal Laws but absolves itself of liabilities because of its policy of non interference in the affairs of minority communities except on the initiative of the community.

11.1.1. Concluding Comments and the Implementation

Some of the concerns were

Paragraph 44 and 61: The failure of the State in not taking any steps to review the declaration to Art 16 (1) and (2)

Paragraph 51 : The feminisation of poverty and the disparities in income between men and women.

Paragraph 52 : The adverse sex ratio and the number of 'missing' girl children.

Paragraph 60 : The failure to take any steps to reform Personal Laws and remove sections which are discriminatory to women.

Paragraph 62 and 63 : The failure of the State to make the registration of births and marriages compulsory and to monitor its implementation.

Paragraph 68 and 69 : The failure to take effective steps to correct social evils like dowry and sati and the failure to implement the laws in this regard.

Paragraph 78 : The failure of the State in reducing maternal mortality or preventing sex selective medical procedures.

With respect to the **implementation** of the concluding comments, some of the changes in the laws pertaining to women and the family are :

The Marriage Amendment Acts of 2001 - Act 49 of of 2001 removed the ceiling of Rs500/- for maintenance under Sec125 of the Criminal Procedure Code.

Act 50 of 2001 set a time frame for the disposal of interim applications for maintenance during matrimonial proceedings pending before a Court of law. Act 51 of 2001 amended sections of the Indian Divorce Act removing the dichotomy of grounds for men and women and introducing the concept of divorce by mutual consent among other changes.

Section 155(4) of The Evidence Act was amended deleting the section where by the character of the prosecutrix in a rape case was germane to the case in evidence.

The Hindu Marriage Act and The Special Marriage Act were amended including the place of present residence of the petitioner as a place of jurisdiction.

The Domestic Violence Act was passed in 2005 and the rules framed in 2006.

11.2. CRITICAL AREAS OF CONCERN

A. ***At Entry***: Within India, the denial of the right to marry, though prevalent, remains largely unacknowledged. It is not an issue that makes people comfortable. However the kind of violations being faced by couples and families in cases where choice marriages have happened between caste or community groups have led to an increasing concern among activists regarding abuses of this right.



Despite the presence of the Special Marriages Act, 1954, there is a complete absence of any state support to victims of forced and denial of choice marriages, which works affirmatively for violators of the right to marry. It is the exercise of choice and autonomy by women, which is central to the nature and cause of violations of the right to marry/not to marry, as the exercise is itself seen as a challenge to patriarchal authority and control of female sexuality.

With the backdrop of feudalistic and patriarchal cultural norms and institution, regardless of law, Child Marriages are still being practiced. It believed that a "child bride" would adapt well (and quietly) to the inter, intra-familial responsibilities and sanctions imposed on her. The age of the bride also the determining factor in controlling her sexuality and fertility. The repercussions of Child Marriages get reflected in the poor health and educational status of women, lack of socio, political and economical opportunities, alternatives and resources

Early marriages negates free and informed choice of partner and reinforces inequality. These uninformed choices lead to poor (almost non-existent) decision making or negotiation powers in the relationship - which in turn get reflected in various aspects of their lives - more prominently in for of their poor reproductive and sexual health status. They also result in more children and shows on the health of the woman. The law still has contradictions to the Child marriage Restraint Act in that the exception to marital rape is that the woman is the wife. So also under the Hindu Marriage Act the minor husband is considered the guardian of his minor wife, which again is an exception to the disqualification and legal capacity of a minor.

B. ***Status in the Marriage:*** The man is the head of the house - control over the person and property of the spouse. No decision-making power for women as manifested in the declining sex ratio of women and men. No provision for redressal of marital rape. Father is the Sole Legal Guardian of minor children. Control of sexuality of women as seen in provisions, which criminalise consensual adult sexual relationships.

C. ***Status on dissolution:*** The Personal laws reinforce inequality. Maintenance is minimal and unenforceable and female headed households are poorer affecting the health and education of the children. The father is the sole legal guardian under the law and it affects the rights of the mother to the custody of the children if the marriage breaks down. There is no concept of equal division of matrimonial property. Rape of a separated wife entails a lower punishment.

D. ***Widowhood:*** Tradition and customs limit the effective implementation of the law in practices like sati. Widows make up 8% of the population but there is no effective support system in place for them. The monetary compensation given to war widows only worsened their situation as they were forced to remarry into the family of the dead husband for the sake of the money and then abandoned. The number of young widows is increasing as the HIV epidemic spreads.

E. ***Domestic violence*** is the result of unequal power relations within the family. The is no adequate and effective law to prevent abuse of the woman Dowry harassment /suicide or homicide is the most visible form of domestic violence and even here the law is not effectively implemented.

F. ***Right to Property:*** There are different rights of inheritance under the different personal laws. Tenancy laws exclude women and negative their land rights but have been upheld by the courts - Madhu Kishwar's case. Women have no right to property acquired during the marriage, which usually stands in the name of the husband even if the wife has contributed towards its purchase The exception to the legal position that succession can never be kept in abeyance is the right of a Hindu daughter to ask for partition of a dwelling house.

G. Rights Violated and its Effects:

- Plurality of personal laws results in the negation of equality not only between men and women but also between women of different communities. This violates the constitutional guarantees of equality and non-discrimination
- The law normatively recognises the right to marry a person of one's own choice, though it does not get translated in its ensuring protection for all its citizens, especially the one's who are most vulnerable-children.
- Given our social situation, right not to marry has never been acknowledged. The fact that girls will marry is a fore gone conclusion. Sexual choices are socially impermissible, and legally, not addressed.
- While domestic violence continues to take the lives of countless females in India and is increasingly perceived as a problem to be confronted publicly, the interconnectedness of forced marriage with domestic violence remains unspoken.
- Redress for violence within the home does not have adequate, enforceable legislation and this leads to increase of abuse of women within families - both natal and marital.
- Marital rape is not included as an offence and rape of a legally separated wife attracts a lesser penalty and violates a woman's right to live with dignity. (Sec 376A IPC) DV Bill.
- Women do not have a provision under the criminal justice system to seek redressal for adultery on the part of the husband, (497 IPC). This section allows or enables men to control female sexuality and fails to understand that polygamy is discrimination against women.
- The Declaration to Art.16(1) and (2) CEDAW by the State based on its policy of non-intervention has resulted in the failure to guarantee the rights of women in the private sphere.
- Failure to implement the Dowry Prevention Act has led to an increase in Dowry deaths.
- Negation of equal rights to property under the personal or tenancy laws impacts on the economic empowerment of women.
- The PNDT Act has not reduced foeticide or stopped sex selective abortions and women do not have the right to choose spacing of children.
- Declining sex ratio is an indication of the lack of choices for women within the family.
- The position of the father as the sole legal guardian of the children has a negative impact on the rights of the woman in the event the marriage breaking down.
- Non- enforcement of registration of births and deaths affects the inheritance rights of women and encourages early and forced marriages.
- Early marriage affects the right to free and informed choice and re-enforces the inequalities that exist in marriage.
- Lack of adequate maintenance to separated or divorced women has led to economic deprivation in female headed households which affects not only the rights of the woman but also the rights of the children..

11.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

- The personal laws are based on the religion of the parties and the laws are :

a) The Hindu law as codified in 1955/56 which has been updated with amendments of 1976 and 2001



b) The uncodified Muslim law

c) The codified Christian law amended in 2001

d) Parsi Law

e) Tribals governed by customary law and practice

- Art. 14 of the Constitution of India, guarantees to women the right to equality and equal protection of the law and Art 15 (1), specifically prohibits discrimination on the basis of sex.
- Consent of the parties to a marriage is the prerequisite of a valid marriage among all the Personal Laws, as well as the Special Marriage Act 1954.
- The Child Marriage Restraint Marriage Act 1974 criminalizes the marriage of children below the age of 18 and men below the age of 21.
- Sec 498A IPC is the only section that addresses domestic violence. Introduced by the Criminal Amendment Act of 1986 it makes the abuse of a woman by her husband or in-laws and offence.
- The Dowry Prohibition Act of 1961 has been amended from time to time to widen the definition of dowry and the scope of investigation and appreciation of evidence.
- The Pre-Natal Diagnostic (Regulation and Prevention Of Misuse) Techniques Act of 1994 was passed to curb sex-selective abortions and female foeticide.
- The marriage Laws Amendment Act of 2001 - Acts 49, 50 and 51 removed the ceiling of Rs500/- as maintenance under the Sec 125 of the Criminal Procedure Code, gave a time frame for passing an order of maintenance and enlarged the grounds for divorce available to Christians among other provisions.
- In 1953 The Central Social Welfare Board was set up with its focus on social and economic empowerment of women.
- The Department of Women and Child Development within the Ministry of human Resource Development was set up in 1985 to help form polices and amend existing laws or pass new legislation and co-ordinate with other branches of the Government for the empowerment of women.
- The National Commission for Women, which is a statutory body was set up in 1990. It has the powers of a civil court for investigation but is not empowered to pass or execute orders and makes only recommendations. It takes on file all violations of rights of women either suo moto or on complaint.
- Many States have a State Commission for Women. Its functions are similar to the NCW but it is not a statutory body and so does not have the powers of a court for investigation.
- Reproductive and Child Health Programme an integrated programme for immunization and reduction of maternal mortality, family planning and treatment for sexually transmitted diseases.
- All Women Police Stations were set up in many states to enable women to file complaints with specific reference to domestic abuse.

11.3.1. Gaps

- The States declaration to Art 16(1) & (2) CEDAW nullifies the equality and anti discrimination provision in the Constitution of India
- The State has signed other Human Rights Treaties with analogous provisions without declarations or reservations

- The declaration to Art 16(1) & (2) which are core provisions of CEDAW impacts on the lives of women in the private sphere.
- No steps have been taken by the state to reform the Personal Laws ensuring that women are equal before the law and have equal protection of the laws.
- When the law is based on religion, the rights of the group are given priority over the rights of its individual members, especially its women.
- The laws that are based on religion and custom do not conform to normative standard of substantive equality.
- Lack of consent of the parties to a marriage makes it voidable and a minor cannot give consent much less full and informed consent but the marriage of minors is still held to be valid and family or caste honour takes precedence over the rights of individual women.
- All laws related to marriage identify free and full consent as an ingredient of valid marriage. Factors that could have contributed to making their consent conditional or coerced are not identified or addressed in any of the relevant statutes.
- The protection laws, while recognising coercion in marriage as a crime, do not provided for its dissolution on this ground.
- The procedures involved for marrying under the Special Marriages Act, 1954, are relatively more complex than other customary provisions. While it is meant for the protection of the exercise of the individual right to choice and decision-making in relation to marriage, the process providing for sign posting system and allowing others to make complaints is in fact equally violative of the rights it seeks to protect.
- The state has failed to take any steps to establish a comprehensive and compulsory system for registrations of births and deaths.
- The state, while acknowledging that violence in the family has reached alarming proportions, has failed to pass a Bill to Prevent Domestic violence and protect women within the home.
- The implementation of the Dowry Prohibition Act even within the framework of the Criminal Amendment Act of 1983 and 1986 still results in a large percent of acquittals.
- The Supreme Court has taken steps to enforce the prevention of sex selective abortions and bring down female foeticide but the States have not strengthened the hands of the Court by providing the court with necessary information.
- Sec 498A IPC is not adequate to deal with all aspects of violence faced by women within marriage.
- There is no effective provision of law to enable women to ensure payment of maintenance.
- The state has depended on the judicial activities of the Superior Courts rather than implementation of the laws to change societies attitudes towards women within the family
- The state has failed to remove from the statute book Sec 497 IPC, the provision relating to adultery, if it is to be retained then there should be equal penalty for adultery.
- The State has failed to recognize the concept of marital rape and rape of a woman by a separated spouse and provide for adequate punishment within the criminal justice system. Rape of a separated spouse carries a punishment of 2 years imprisonment as against 5 years in other cases.
- The role given by the State to the police as facilitation of compromise in matrimonial crimes has led to further deterioration in implementation of laws.



- The provisions within family and tenancy laws, which are discriminatory to female ownership of land violate the concept of equality.
- The steps taken to counter the declining sex ratio especially in the age group of 0-6 are not adequate.
- The provisions of Child Marriage Restraint Act make it an offence if a woman below 18 or a man under 21 gets married. The punishment for the offence is negligible and the marriage is valid if not declared null and void by a competent court. - Lack of compulsory registration coupled with the lack to political will to enforce the Act results in a large number of child marriages.
- Women are not viewed as victims in cases of foeticide but are treated as the accused.
- The State has to look at the flaws beyond the defacto status in the system that reinforce inequality

11.4. RECOMMENDATIONS

- The State must review the declaration to Art. 16(1) & (2) and withdraw it. It also must examine the impact of its declaration to Article 5 (a) and withdraw the same. The state must re-examine its self imposed limitation to complete and full compliance with the principles of CEDAW
- The State must take effective steps, mend and reform the personal laws so that the provisions for matrimonial relief or rights of inheritance are the same for all women.
- The State should enact and Optional Civil Code applicable to all its citizens which they may follow.
- The State must recognize and uphold the right to autonomy and decision-making in entering marriage as a core fundamental human rights issue.
- The State must recognized the violations being committed against women to control their choice and decision-making in relation to entry into marriage, by families, communities and the state actors themselves.
- The state must make institutional provisions to uphold women's rights to autonomy and decision-making, by providing adequate interventions to support women in the safe exercise of their choice.
- The State must make every effort to ensure respect for women's right to sexual autonomy and decision-making with various communities, by ensuring legal support, through reform, (implementation of the Special Marriages Act, 1954) policy-efforts and programmatic interventions, through media and all other means.
- The State must establish a time bound compulsory system for registration of births and marriages.
- The State must through State audio and visual media give wide coverage to the concept and benefits of registration of births and marriages.
- The State must, in keeping with the spirit of equality and non-discrimination enshrined in the constitution, amend all laws, which undermine the agenda for gender equality within the private sphere.
- The State must enact a comprehensive law to prevent domestic violence with penal, civil and administrative sanctions to punish the abuser and provide redressal for the victim.
- The enacted legislation must have both civil and criminal law components if it is to address as socially unacceptable, abuse of women within the home.
- The State must make provision for short-stay home for victims of domestic violence and not abdicate its responsibility to NGO's.

- The state must through effective legislation introduce the concept of community property, which entitles a woman on dissolution of marriage to a share in the assets acquired during the marriage.
- The State must amend the law relating alimony /maintenance to ensure prompt payment of decreed amounts and enforce the implementation of the time frame specified by law under the Marriage Amendment Laws of 2001
- The state must recognize and take effective and urgent steps to stop female foeticide and female infanticide.
- The State must amend the laws, which recognize the father as the sole legal guardian and introduce the concept of joint guardianship of mother on the dissolution or break down of a marriage.
- The State must take effective steps to eradicate social practices like sati and trial & customary practices which are derogatory to women.
- The State must ensure that the NCW & State Commission have adequate resource to function effectively(non partisan/non-political).
- The State must speed up legislative changes to provisions of The Sati Prevention Act 1987, Family Courts Act 1984, Child Marriage Restraint Act 1929, Rape Laws, PNDT Act, 1994, The Hindu Code and The Special Marriage Act 1954 which have been pending before the relevant ministries from 200/2001.
- The emphasis should be on effective implementation of laws and policies.



PART II : SPECIAL CONCERNS

INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 12

CHAPTER 12 (PART - I)

PRESENT STATUS OF MINORITY WOMEN IN GUJARAT



PRESENT STATUS OF MINORITY WOMEN IN GUJARAT

Victims of a horrific one sided Carnage; the Muslims of Gujarat 2002 Religious Violence; despite being brutalized and destroyed physically, psychologically and materially are living like refugees and Internally Displaced Persons in most of the cities and districts that they belonged to, from where they fled to the camps in 2002. Over **one and half lakh Muslim men, women, children and elderly lived as refugees in camps for 10 months** across the state. The Government of Gujarat gave **official recognition to the camps only for four months, forcing the camps to be closed even when the tensions and insecurity prevailed among the internally displaced families** belonging to the Muslim Community.

After three years of one-sided Carnage, it is estimated that even **presently 35,000 persons across the state are living displaced** lives, coping on their own. This is **besides 6,000 houses provided to the affected families as part of rehabilitative measures by various civil society organizations** with state government completely abdicating its role in rehabilitation and resettlement of the Internally Displaced Muslim families. The families who have been relocated and / or rehabilitated are forced to live in the outskirts of the main cities and villages or continue living in the same area amidst threats and insecurity.

This change in center and the Supreme Court Directives though has instilled some sense of relief in terms of security and hope for justice, within the Muslim Minority Community within Gujarat, the fight for Legal Justice, Compensations and Basic Human Security and Dignity is an everyday struggle for the Muslim Community within the state of Gujarat. The struggles are ongoing and continuous as the State Government in the state of Gujarat is the same that was responsible for organizing, supporting and participating in the Carnage of 2002 against Muslims within the state. The State Government being favouring and implementing Right Wing Ideology and the civil society being polarized with Majority Communalism creating intolerance towards the Muslim Minorities has lead to Muslim Minorities being forced as Second Class citizens of the State.

Within Gujarat the Muslim Minorities today face

1. **Forced Segregation in terms of areas and localities**
2. **Discrimination faced from Government and Civil Society**
3. **Obstruction in assessing the Opportunities in various fields and levels in their day to day life along with ongoing struggle for Legal Justice and Compensations.**

Within the state of Gujarat the Muslim Women are facing large scale violence, discrimination and denial for being belonging to a particular Minority Community rather than being a women within her own community. The issues of Human Security, personal threats, forced poverty, inaccessibility to education, health and livelihood options due to Majority Communalism and the Partisan State being central to her life in today's context. These situations on other hand limiting her capacities to struggle for reforms in favour of women within her own community and religion.

The impact of Communalism equally effects the Muslim Minority women as men since whole of the community continues to be the targets of the Right Wing Communal Forces with the state support in present times also. It is with this context that one has to look at the violations faced by Muslim Women within Gujarat in framework of CEDAW.

Today, each and every right guaranteed under CEDAW is being violated on daily basis for the Minority Women belonging to Muslim Community in Gujarat, which can been seen from the below information.

1. STRUGGLE FOR LEGAL JUSTICE

A. Struggle for Legal Justice in terms of Prosecution

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. Partisan and threatening attitude of the Gujarat State Police Agencies investigating the registered cases

The survivors, who have registered the cases in courts, have given depositions in State Constituted Inquiry Commission constantly face threat and harassment by the police officials.

Examples:

Sabinabano from Mehboob Building who deposed in the Inquiry Commission against the Sexual Assault by the paramilitary and State Police on her, the Rapid Action Force and Police personnel went to her area inquiring about her character and relations to undermine her testimony.

Nasimbanu Chauhan, a gang rape survivor whose husband and brother in law have been killed has been repeatedly questioned and grilled by the police including by the Women police officials in the Women's Police Station for five days for five - six hours after she lodged her complaint in attempt to break her. This has resulted in severe mental fatigue and trauma for her.

2. Lack of Legal Aid Support by the Government of Gujarat

A. The Free Legal Aid Authority Services being an government body, is not accessible to the survivors for procuring free legal aid as in most cases the perpetrators involved are linked with the State Agency and the Free Legal Aid Services Authority have no powers to register the cases if they are against the State it self.

B. There is complete lack of Legal Aid support to the survivors and witnesses seeking justice. The Lawyers and Public Prosecutors appointed by the State across the last two years and nine months have been affiliated or members of the Right Wing Communal Forces or the supporters of the Hindutva Ideology.

Examples:

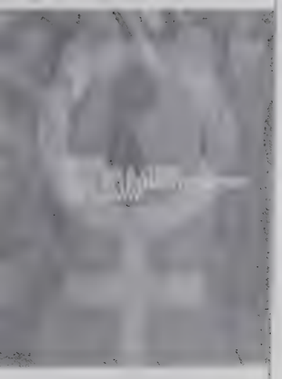
The Public Prosecutors appointed by the State Government for the Best Bakery trial was from VHP and the NGO supporting the survivors in the case had to approach the Supreme Court to change the Public Prosecutor.

In the State Inquiry Commission the State Appointed lawyers are openly hostile during the Depositions by the Muslim Minorities (women and men who depose on the partisan role of police, sexual and targeted attack on Muslims during the Carnage) and do selective cross examination to undermine the evidence of the survivors and in media questioning the integrity and reliability of the witnesses.

3. Lack of Adequate protection by the Government of Gujarat to the survivors fighting for justice

A. The survivors and witnesses, who have registered the cases or have come forward for depositions in the State Inquiry Commission have been attacked, threatened or attempts have been made to coerce them to make false statements/ testimonies.

B. Across the state most of the accused persons have been granted bail or are absconding. Coercions, intimidations, threats are been used by them to harass the survivors. The insecurity being high among Muslim Minorities since many of the accused that have been granted bail were responsible for grave sexual assaults, burning, maiming, cutting and killing of Muslim Minorities with support of State Agencies.



Examples:

Guddu Charra one of the accused that was absconding and was arrested in border of State of Rajasthan for dacoity in October 2004. During his custody in Baroda Jail in State of Gujarat, he was heard narrating to other Hindu Men how they had sexually assaulted, maimed and killed Muslim Women with rods and sticks to teach them a lesson. The incident clearly depicting that using women from the Muslim Minority Community for perverted Sexual Needs and revenge is continuing as an agenda for the Hindu men who are part of Right Wing Communal Forces.

Sister of Yasminbano one of the witness in Best Bakery Case was threatened by a couple (man and woman) to give the address of Yasminbano in Mumbai when Yasminbano left for giving her evidence in the court. " Give us her address or we will kidnap you and you will have to face the consequences" is what was told to her. Yasminbano has identified 11 of the accused responsible for Best Bakery massacre.

Seventeen-year-old Yakoob Abdul, son of a key eyewitness in Anjawana Massacre case in Panchmahals was assaulted by relatives of the accused. They asked him to tell his father not to appear in court for the case or they will have to face consequences.

4. Lack of means of sustenance for fight for justice

The survivors and witnesses who are willing to fight the legal battle for Justice are in need of assistance in terms of Monitory help, Counseling and Protection. As evident from the cases that are coming up for hearing or managed to get the attention of the Supreme Court was made possible by the Human Rights Groups supporting the Survivors. These lack of support in terms of money, security and protection from the harassment from the State Agencies (these can be through threats/ coercions) have led to many witnesses turning hostile, giving false testimonies or evidence and else giving up the fight.

Examples:

Witnesses turning hostile in cases that have come on board in Courts.

The affected survivors been coerced/ forced to sign affidavits praising the relief measures of the government in name of giving them pending compensations". 2000 of which 500 are from Panchmahals such false affidavits have been filed in the commission and very few survivors are ready to retract due to fear.

Contributing Factors to the Disparity / Violation

- The continuing partisan attitude and measures by the state government.
- The continuing tight monitoring of the Right Wing Communal Forces on the survivors/ witnesses who are fighting legal battles and their continuing efforts to break the witnesses/ survivors by coercion, threats.

Initiatives by Government of India to address the Violation/ Disparity

1. The Supreme Court has stayed the proceedings of the 10 most heinous massacre cases in the courts of Gujarat and of which one case has already been transferred in the High Court of Mumbai and in another case, the survivor has filed a petition for transfer of the case.
2. The Supreme Court of India has issued orders for adequate protection of the witnesses to the State Government.
3. The apex court of India has given the directive to the State of Gujarat to reopen all the cases of Communal Violence registered in 2002.

Effectiveness of the Initiatives by the Government of India

1. The State Government of Gujarat was forced to change the Public Prosecutor in the case that has been shifted to the Mumbai High Court.

2. The State of Gujarat formed the high level committee to reopen the registered 2020 cases of Communal Violence and have submitted their first quarterly report in November 2004. According to the report 724 cases have been reviewed and investigation has restarted in 286 cases. The police has made 44 fresh arrests and filed 3 new cases after the reopening of the cases.

Gaps of the Initiatives taken by Government of India

1. Though the Government at the Center has changed and the Supreme Court has given certain important directives, the situations within the State of Gujarat remain unsafe and insecure for the Muslim Minorities. As evident from the case of Best Bakery Massacre that has been transferred to Mumbai High Court, the key witness Zahira Sheikh was successfully coerced to retract her statement, there are continuous and stringent efforts by the state to stop the witnesses from fighting the legal battles.

2. The High-level committee formed by the Government of Gujarat comprises of high ranking Police Officials of who one is woman and one police official belongs to Minority Community. This committee is empowered to take decisions about the reopening and reinvestigating the cases. However, looking at the history of the Majority Communalization and Saffronization of the police force (witnessed during the Gujarat Carnage across the state, now being testified by the senior police officials in the State Inquiry Commission) the complete authenticity of the task remains questionable.

3. Secondly, the reopening of the cases suggests that the FIRS of the cases registered will be relooked at. There have been several grave discrepancies in filing and registering the First Investigation Reports by the police all across the state. These discrepancies include:

a. FIRs registered by Muslim Communities in areas where the violence occurred start with " Due to happening in Godhra on February 27, 2002 communal violence happened, during which the mob came out with swords, spears, pipes etc". (Order of words unchanged) The jurisdiction is spelled to be the area in which the violence occurred.

b. In almost all cases registered an incident showing attack on Hindu home/ person has been used as the justification by the police for attack on Muslim areas in the FIRs.

c. In the FIRS registered the damages have been specifically mentioned individually for each complaint but the names, age and the type of violence on that particular family has not been noted.

d. In most FIRS, the names of the perpetrators are not noted; instead, " a mob came attacking" has been written. Several testimonies taken by SAHR WARU indicate that it has happened in cases even when witnesses have given names during the registration of the offences.

The place, jurisdiction, names of the victims and accused become crucial in investigation for prosecution. However, as in most FIRS since the police did not register the name of accused and rather named them as "unknown mobs" and have left blanks in place of name of the witnesses and the victims the mechanized reopening of the cases might serve little purpose.

B. Struggle for Legal Justice in terms of Compensations, Rehabilitation and Relief

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. Inadequate amounts of compensations given to the survivors who have suffered heavy economic losses.

2. Struggle for compensations for the family members who have been killed. The situation is more complicated and violative for the single women, widowed during the Carnage of 2002.

3. Continuing Economic crisis and poverty situations due to paltry compensations compared to the damages incurred, loss of livelihood means affecting assess to health, education and other basic rights.

Contributing Factors to the Disparity/ Violation

1. The harassment by the responsible officers in collectorate, police and hospitals to procure necessary documents to avail compensations, the corruption at the collectorates to procure compensation cheques after all the proofs have been submitted adds heavy and forms the main part of the struggle to avail compensations.

2. The legal illiteracy of procuring the documents in terms of addresses of the government offices/ hospitals, names and procedures related to procuring certificates make the Survivors dependent and vulnerable on certain agents forcing them to pay large amounts of money depending on the documents needed.

State Initiative to address the violation/ Disparity

None

Effectiveness of the State Initiative

None

Gaps of the State Initiative

None

Along with the above mentioned struggle for Right to Justice and Adequate Relief and Rehabilitative Measures for the Muslim Minority Community including Women, the present prevailing State and Societal Discrimination, Majority Communalism and continuing activities of Right Wing Communal Forces to repress Muslim Minorities denies and obstructs availing equal assess and opportunities to basic rights of proper housing, sanitation, pure drinking water, adequate food, rights to basic health care, education and employment opportunities, thus obstructing the equal opportunities and access to entering mainstream society and for equal public and political participation. Under the given circumstances following Rights of Women belonging to the Muslim Minority Community is violated on every day basis.

2. ONGOING VIOLATIONS IN DAY TO DAY LIVES IN PRESENT CONTEXT

A. Right to Secure and Dignified Life

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

The grave, perverted and planned Physical and Sexual Assaults by Hindu Men in certain cases supported by Hindu Women during the Carnage 2002 on the Muslim Minority Community - particularly women and young girls have permanently etched a fear among the Muslim Community about their security. These sense of fear and high Human Insecurity has lead to restricting the mobility of Muslim Community in general and Women and young girls in particular. The Restriction of mobility for women being part of Muslim Community has lead to restriction of available options and opportunities in fields of education, training, public and political participation, health, employment.

1. The Women belonging to Muslim Minority Community live under constant threat and in insecurity about her own self and her family due : -

a. Sporadic Violent incidents of violence against Muslim Minorities used as a tool to create threat and insecure environment for the Muslim Minorities by Right Wing Communal Forced supported by police.

b. The tension and fear accompanied by sporadic incidents of violence during the festivals and public processions and the intensive combing operations of the State police during these festivals.

c. The continuing State operations to book Muslim Minorities under various draconian laws after being

alleged as anti nationals or plotting conspiracies. It has double edged effect - the Muslim Minorities alleged are taken in to custody and tortured in the police custody and in general civil society these acts deepens Anti Muslim feelings thus further alienating the Muslim Minorities from the mainstream and forcing them to be defensive about their religion and nationalism. These acts by the State Agencies are not only within the State and on the Muslim Minorities living in the State, the Muslims living in other parts of the country have also being targeted and killed.

d. The threats to life of her own self and her family members are very high in cases of survivor families who have been involved in process for Justice.

e. Muslim Women who are forced in to single women status - since their husbands have been killed in violence/ since their husbands have been detained under POTA by the State agencies face increased vulnerability due to lack of any sustained livelihood options, threats for being witnesses and survivors, lack of support in procuring necessary compensations, and due to their status as single women in the society.

2. The polarization and the widespread Majority Communalism within the Civil Society and within the State Agencies in Government of Gujarat forces Muslim Women to be defensive on basis of her religion, hence she has to constantly face humiliation in her identity as Muslim.

Contributing Factors to the Disparity/ Violation

1. Continuing acts of sporadic violence across the state by the Right Wing Communal Parties.

2. Continuing Partisan and Right Wing Ideological Attitude of the State Government

3. Continuing Hindu Majority Communalism within the general civil society with no efforts by the State Government to promote the inter religious tolerance and Cultural Integration.

Initiative by the Government of Gujarat to address the violation/ Disparity

1. The State Police Force of the Government of Gujarat conducts intensive Combing Operations during the festivals and the public processions. As per the Government of Gujarat these Combing Operations are preventive measures to stop violence.

2. In 2002, The Government of Gujarat had constituted the Women's Cell under State Home Department to listen to the grievances of the affected women victims.

Effectiveness/ Gaps of the Initiative taken by the Government of Gujarat

1. The Combing Operations undertaken during the festivals and public processions in name of security and preventive measures to stop violence are used as sites of intimidations and detentions of Muslim Minorities. Of the total Hindu and Muslim persons detained, as of today - only 8% of detained Hindus are still in Jail while 30% of Muslims are still in custody in Jails.

2. The Terms of Reference of Women's Cell constituted by the Government of Gujarat says - "On February 27, 2002 in an inhumane incident Sabarmati Express was set on fire, due to which several violent incidents occurred across the state. The State Government has involved itself in taking intensive efforts to rehabilitate the affected persons of the incident. Parallelly, women and children who have been affected and are mentally unstable due to the incident, the State Government has constituted a Women's Cell to give them moral support, to reinstall self confidence after venting out their fear, to give them a platform to register their complaints without fear and (sankhoch) and register a legal complaint in related police station if needed". The Women's Cell was constituted in June 2002 when the sporadic acts of violence, intimidation were still continuing against the Muslim Minorities, while



the Government Officials were harassing and intimidating Camp organizers across the state for the closure of the camps and while still the Muslim Minorities continued to live in the camps. Due to the continuing state complicity and intimidation, most women belonging to the Muslim Minority Community did not feel safe, secure and assured of approaching the Women's Cell on their own. In City of Ahmedabad Of the 8 Women Survivors of Burns and/or physical assaults by Hindu men and State police, witnesses of Sexual Assaults, supported by Non Governmental Organization who deposed before the Women's Cell, no further action has been taken by the State Government as defined in their Terms of Reference after the deposition.

B. Right to Public and Political Participation

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. The State Saffronization, the Majority Communalism and the continuing activities of Right Wing Communal Forces has restricted the Public and Political Participation of the Muslim Community including women.

Examples:

a) In the General Assembly or State Assembly Electoral Polls Muslim Community were denied the right to voting as

i) There were hundreds of named missing from the electoral lists.

ii) The families who have been resettled in different areas across the state were listed as voters in their old areas. These areas were not safe and also far in terms of distance hence making it difficult for them to participate in the electoral polls.

b) In villages/ towns and cities the Majority Community rejects the complete Muslim Minority Community barring them from entering the mainstream in terms of employment, purchasing property. The participation in Public and political life for Muslim Women in given circumstances becomes almost impossible amidst the hostilities without any State Measures.

2. The restriction on mobility due to Insecurity, lack of access to education, trainings and other development opportunities results in inaccessibility to equal participation in public and political life for Muslim Minority Women.

Contributing Factors to the Disparity/ Violation

1. Continuing State Partisan Attitude
2. Continuing Majority Communalism within the Civil Society and lack of State Measures to stop it
3. Continuing Right Wing Communal Forces activities to create alienation and Anti - Minority Society.

C. Right to Education and Training

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. Lack of sense of Human Security restricts mobility of young girls, resulting in denying the access to choose education and training options, forcing to avail the options closest to their residence or are in Minority dominated areas.
2. Displacement and forced poverty denying the access to the education and training, due to the monitory and security issues as the schools are far away from the colonies where the survivors have been resettled.
3. The saffronization of the education, the prevailing Communalistic attitudes within the School

Administration, School Teachers, School students leads to alienation of Muslim Students in the main stream society, again forcing them to avail schools in only in the Minority dominated areas or of Minority Community due to sense of insecurity and hostile environment.

D. Right to Employment and Livelihood Opportunities

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. Sustainable Livelihood and employment is a critical issue for Muslim Minorities in Gujarat. While the property and livelihood means have been devastated in the Carnage of 2002, continuing economic boycott accompanied by threats and attacks prevent the survivors from restarting their businesses
2. The earlier employed Muslim men are forced to resign, thrown out of their earlier jobs or are given employment at half wages.
3. The Displacement and resettlement outside the cities/ towns/villages limit the access to the livelihood options.
4. The Displacement and Resettlement on the outskirts of the cities/ villages/ towns make traveling very costly for the survivors, leaving bare minimum income to fulfill all the basic necessities of adequate food, health care, hygiene, education and proper shelter.

E. Right to Health and Health Care

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. Each of the survivor belonging to the attacked areas where grave violations occurred, need counseling help. There is severe impact on mental and emotional health of the Muslim Minorities including women, youth, children and men who have been witness to physical and sexual assaults. The trauma being continuing with prevailing sense of constant insecurity and sporadic violence.
2. The displacement in the far-flung localities have resulted in non accessibility to health care systems.
3. The physical locations of the rehabilitated colonies - besides the sewage farm, in water logged areas, in areas where there is no basic sanitation and garbage disposal facilities result in continuing ill health condition, further intensified due to economic crisis due to lack of sustainable livelihood and inaccessibility of health care systems in times of emergencies.

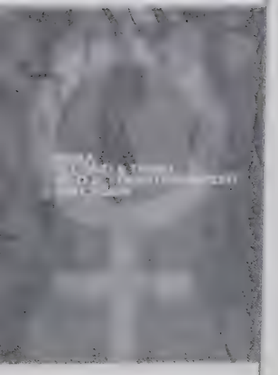
F. Right to assess to Economic and Social Life

Violation/ Disparity faced and the impact on Muslim Women for being Muslim Minorities:

1. The societal discrimination, intensified due to Partisan attitude of the State results in non accessibility of economic rights such as - availing bank loans, setting up businesses.
2. The constant prevailing insecurity and tension increases manifold during the Minority Festivals and public processions of the Majority Hindu festivals, since invariably across the state the incidents of violence take place in these times. These incidents of violence, tension and insecurity lead to denial of enjoying social and cultural life for Muslim Women as part of being Muslim Minorities.

Contributing Factors to the Disparity/ Violation

1. The Banks refuse to set up Banks in the Minority Dominated areas.
2. The State Transportation buses do not travel from the Minority dominated areas.
3. The local leaders within the majority community create situations that lead to humiliation of the Minority Community or desecrates their religious places.



CONTRIBUTING FACTORS FOR THE VIOLATIONS OF ABOVE MENTIONED RIGHTS

STATE REPRESSION

1. Detention of Muslim Men and youth under POTA

POTA - Prevention of Terrorism Act was passed by the Parliament after the attack on Parliament to counter terrorism. However the State Government of Gujarat had been using POTA to victimize the Muslim Minorities. Of the 305 persons detained under POTA - 297 persons detained are Muslims.

The situations for the families whose family members have been detained under POTA - particularly Women continuos to be vulnerable even after the repealing of the POTA act by the Governments of India.

2. GUJCOC Bill

The State Government of Gujarat is in process to bring to force Gujarat Control of Organized Crime, Amended Bill 2003 (GUJCOC). GUJCOC similar to POTA in many contexts is more repressive in nature and Minorities, Human Rights defenders and social activists working for justice and peace are vulnerable to be threatened or victimized through GUJCOC if the Bill is Amended.

3. Anti Conversion Bill by the State Government of Gujarat

The Anti Conversion Bill by the Government of Gujarat makes it compulsory for the person to take the prior permission of the District Collector for the Religious Conversion. It also makes it mandatory for the person performing conversion to report all the Conversions to the Taluka Magistrate. The close monitoring by the Government and the Right Wing Communal Forces and the unneeded importance given to the issue of "Religious Conversion" has created a sense of mistrust within Hindu Majority Community towards the Christian Minorities. The "Conversion" issue is also used to target the Missionaries and the Christian Schools and Churches by the Right Wing Communal Forces.

4. Victimization of Persons assisting Muslim Minorities in Legal Cases and Human Rights defenders.

There is constant attempt by the State Government to discredit/ allege the Human Rights Groups who have been working with the survivors of the Gujarat Carnage in terms of Relief, Rehabilitation and Justice Efforts. While in 2002 the Human Rights Groups who extended the support to the Survivors of the Carnage in terms where made to look as " Non Gujaratis who live a five star life style bringing discredits to the state of Gujarat" thus alienating the mainstream society of Gujarat that comprises of middle class Hindus from looking at the Carnage in an objective way". The attempts continue by the State Government not only to alienate and discredit the Human Rights Organizations within the General Civil Society but also to victimize, pressurize and monitor their actions.

ONGOING ANTI - MUSLIM MOVEMENT OF RIGHT WING FORCES

1. Training of Youth by the Hindu Right Wing Outfit - RSS

The Right Wing Communal Forces continue to enlist and train cadres of youth - men and women through camps, celebrations of festivals or cultural activities, constantly keeping the Anti Minority Environment in the civil society that affects the undertaken Peace processes.

2. Continuing agenda of the Communal Forces

Communal Forces continue working on its agenda of saffronizing all sections of society and government. Within Gujarat this continues through Graffiti on walls, completely segregated civil society and ideologically justifying violence on Minorities. In other states across the country the saffronization happens through cultural, religious and educational institutions.

Table Depicting Violation of CEDAW for Minority Women in Gujarat

Sr. No.	Article Violated under CEDAW	Description of Article
1	Article 1	Defining Discrimination against women by means of distinction, exclusion or restriction on basis of sex; which has the effect/ purpose of impairing/ nullifying the recognition/enjoyment/ exercise of human rights and fundamental freedoms irrespective of their marital status in political, economic, social, cultural or any other field.
2	Article 2	State Parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women
3	Article 2 (a)	Ensure through law and appropriate means the practical realization of the principle of equality of men and women
4	Article 2 (b)	Adopt appropriate legislative and other measures including sanctions when appropriate to prohibit discrimination against women
5	Article 2 (c)	To establish legal protection of the rights of women and to ensure through competent national tribunals and other public institutions provide effective protection of women against any act of discrimination
6	Article 2 (d)	To refrain from any act or practice of Discrimination Against Women and to ensure that public authorities and institutions shall act in conformity of this obligation
7	Article 2 (e)	To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise
8	Article 2 (f)	To take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women
9	Article 2 (g)	To repeal all national penal provisions which constitute discrimination against women
10	Article 3	State Parties shall take all appropriate measures in all fields, particularly in the political, social, economic and cultural fields to ensure full development and advancement of women, for purpose of guaranteeing them the exercise of human rights and fundamental freedoms
11	Article 4 (1)	Adoption of special temporary measures by state parties with an objective to provide equality of opportunity and treatment
12	Article 5(a)	State Parties shall take appropriate measures to modify the social and cultural patterns of conduct of men and women, with the view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles of men and women
13	Article 6	State Parties shall take all appropriate measures, including



		legislation, to suppress all forms of traffic in women and exploitation of prostitution of women
14	Article 7	State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country
15	Article 7 (a)	State Parties shall ensure to women on equal terms with men the right to vote in all elections and public referends and to be eligible for elections to all publicly elected bodies
16	Article 7 (b)	State Parties shall ensure to women on equal terms with men the right to participate in the formulation and implementation of government policy and to hold public office and perform all public functions at all levels of government
17	Article 7 (c)	State Parties shall ensure to women on equal terms with men the right to participate in non governmental organizations and associations concerned with the public and political life of the country
18	Article 9 (1)	State Parties shall grant equal rights to women to acquire, change and retain their nationality
19	Article 10	State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights in field of education
20	Article 10 (a)	State Parties should ensure the same conditions for career and vocational guidance, for access to studies at all levels
21	Article 10 (b)	State Parties should ensure assess to same curricula, same examinations, same teaching staff of same standard, same school premises and equipment of same quality
22	Article 10 (d)	Same opportunities to benefit from scholarships and other study grants
23	Article 11 (1)	State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment
24	Article 11 (1)(a)	State Parties shall ensure the right to work as an inalienable right to human beings
25	Article 11 (1) (b)	State Parties shall ensure right to same employment opportunities
26	Article 11 (1) (c)	State Parties shall ensure Right to free choice of profession and employment, the right to promotion, job security and benefits and conditions of service
27	Article 11 (1)(d)	State Parties shall ensure right to equal remuneration, including benefits and to equal treatment in respect of work of equal value and equality of treatment in the evaluation of the quality of the work
28	Article 11 (1)(e)	State Parties shall ensure the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity, old age and other incapacity to work

29	Article 12 (1)	State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care, access to health care services.
30	Article 13	State Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life
31	Article 13 (a)	State parties shall ensure the right to family benefits
32	Article 13 (b)	State Parties shall ensure right to bank loans, mortgages and other forms of financial credit
33	Article 13 (c)	State Parties shall ensure right to participate in recreational activities, sports and all aspects of cultural life
34	Article 14 (1)	State Parties shall ensure application of the CEDAW Convention in the rural areas
35	Article 14 (2)	State Parties shall ensure that the rural women participate in and benefit from the rural development
36	Article 14 (2) (a)	State Parties shall ensure the right to participate in the elaboration and implementation of development planning at all levels
37	Article 14 (2) (b)	State Parties shall ensure right to access to adequate health care facilities, including information, counseling
38	Article 14 (2) (c)	State Parties shall ensure right to benefit directly from social security Programme
39	Article 14 (2) (d)	State Parties shall ensure right to obtain all types of training and education, formal and non formal
40	Article 14 (2) (f)	State Parties shall ensure right to participate in all community activities
41	Article 14 (2) (g)	State Parties shall ensure right to access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes
42	Article 14 (2) (h)	State Parties shall ensure right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications
43	Article 15 (1)	State Parties shall accord to women equality with men before law
44	Article 15 (2)	State Parties shall accord to women, in civil matters, a legal capacity identical to men and same opportunities to exercise that capacity. Women should be treated equally in all stages of procedure in courts and tribunals
45	Article 15 (3)	State Parties agree that all contracts and other private instruments of any kind with a legal effect which is directed are restricting the legal capacity of women shall be deemed null and void
46	Article 15 (4)	State Parties shall accord to men and women the same rights



		with regards to law relating to the movement of persons and the freedom to choose their residence and domicile.
47	Article 24	State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention
48	General Recommendation 3	Urging State Parties to effectively adopt education and public information programmes that will help eliminate prejudices and practices that hinder the full operation of the principle of the social equality for women (6th Session, 1987)
49	General Recommendation 5	Recommending State Party to make use of positive action through temporary special measures to advance women's integration in to education, economy, politics and employment (7th Session, 1988)
50	General Recommendation 6	Recommends State to establish and strengthen effective national machinery, institutions and procedures at a high level of Government and with adequate resources, commitment and authority to advise on the impact on women of all government policies and monitor the situation of women comprehensively (7th Session, 1988)
51	General Recommendation 9	Considering that Statistical Information is absolutely necessary to understand real situation of women; recommends the State Parties to make every effort to ensure that national statistical services plan in such a way that data can be disaggregated in to gender with regards to both absolute numbers and percentages and information can be easily obtained on the situation of women in the particular sector (8th Session, 1989)
52	General Recommendation 12	States that Articles 2, 5, 11, 12 and 16 requires the state parties to act to protect women against violence of any kind occurring within family, at work place or in any other are of social life. (8th Session, 1989)
53	General Recommendation 12 Recommendation 1	Recommendation 1 of G.R 12 recommends State Parties to report on the legislation in force to protect women against the incidence of all kinds of violence in every day life (8th Session, 1989)
54	General Recommendation 12 Recommendation 2	Recommendation 2 of G.R. 12 recommends State Parties report on all other measures adopted to eradicate this violence. (8th Session, 1989)
55	General Recommendation 12 Recommendation 3	Recommendation 3 of G.R. 3 recommends State Parties to report in the existence of support services for women who are victims fo aggression and abuses. (8th Session, 1989)
56	General Recommendation 12	Recommendation 4 Recommendation of G.R. 12 recommends the State Parties to report on the Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence. (8th Session, 1989)
57	General Recommendation 19	Background Point no 4. of G.R. 19 recognizes the close connection

		between discrimination against women, gender based violence and violations of human rights and fundamental freedoms. (LLth Session, 1992)
58	General Recommendation 19	General Comment No 6. of G.R. 19 define Discrimination Against Women as stated in Article 1 of the Convention more elaborately and states that " The definition of discrimination includes gender based violence, that is violence that is directed against a woman because she is a women or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation so liberty. Gender based violence may breach specific provisions of the Convention regardless of those provision expressly mention violence." (LLth Session, 1992)
59	General Recommendation 19	General Comment No. 7 of G.R. 19 further state that " Gender Based Violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of the article 1 of the convention". (LLth Session, 1992)
60	General Recommendation 19	General Comment, Point (a) of G.R. 19 include "Right to life" as basic Human Right and Fundamental Freedom. (LLth Session, 1992)
61	General Recommendation 19	General Comment No 7, point (b) of G.R. 19 include " Right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment" as basic Human Right and Fundamental Freedom. (LLth Session, 1992)
62	General Recommendation 19	General Comment No 7. point (c) of G.R. 19 include " Right to equal protection according to humanitarian norms in tome of international or internal armed conflict: as basic human right and fundamental freedom. (LLth Session, 1992)
63	General Recommendation 19	General Comment No 7. point (d) of G.R. 19include " The right to liberty and security of a person" as a basic human right and fundamental freedom. (LLth Session, 1992)
64	General Recommendation 19	General Comment No 7, point (e) of G.R 19 include " the right to equal protection under the law" as a basic human right and fundamental freedom. (LLth Session, 1992)
65	General Recommendation 19	General Comment No 7, Point (g) of G.R 19 include "The right to highest standard attainable of physical and mental health" as a basic human right and fundamental freedom. (LLth Session, 1992)
66	General Recommendation 19	General Comment No 7, point (h) of G.R. 19 include " the right to just and favorable conditions of work" as a basic human right and fundamental freedom. (LLth Session, 1992)
67	General Recommendation 19	General Comment No 8 of G.R 19 states that " The Convention applies to violence perpetrated by public authorities". (LLth Session, 1992)



68	General Recommendation 19	General Comment No 9, G.R. 19 emphasizes that " Discrimination under the convention is not restricted to action by or on behalf of Government. Under Article 2 (e) State Parties have to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Further adding that, under General International Law and Specific Human Rights Covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence by providing compensation. (LLth Session, 1992)
69	General Recommendation 19	Specific Recommendation 24 (a) of G.R 19 recommends that State Parties should take all appropriate and effective measures to overcome all forms of gender based violence whether by public or private act. (LLth Session, 1992)
70	General Recommendation 19	Specific Recommendation 24 (b) of G.R. 19 recommends state parties to ensure that laws against family abuse, rape, sexual assault and other gender based violence give adequate protection to all women and respect their integrity and dignity. (LLth Session, 1992)
71	General Recommendation 19	Specific Recommendation 24 (b) of G.R 19 states that Appropriate protective and support services should be provided for victims. (LLth Session, 1992)
72	General Recommendation 19	Specific Recommendation 24 (c) of G.R. 19 States that State Parties should encourage compilation of statistics and research on extent causes and effects of violence, and the effectiveness of measures to prevent and deal with violence. (LLth Session, 1992)
73	General Recommendation 19	Specific Recommendation 24 (e) of G.R 19 states that State Parties should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of the violence that result. State Parties should report on the measures that they have undertake to overcome violence and the effect of those measures. (LLth Session, 1992)
74	General Recommendation 19	Specific Recommendation 24 (f) of G.R. 19 state that effective measures should be taken to overcome the attitudes and practices mentioned in Specific Recommendation24 (e). States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality. (LLth Session, 1992)
75	General Recommendation 19	Specific Recommendation 24 (k) of G.R. 19 states that the State Parties should establish or support services for victims of family violence, rape, sexual assault or other forms of gender based violence, including refuges, specially trained health workers rehabilitation and counseling. (LLth Session, 1992)
76	General Recommendation 19	Specific Recommendation 24 (o) of G.R 19 state that State Parties should ensure that services for victims of violence are accessible

		to rural women and that where necessary special services are provided to isolated communities. (LLth Session, 1992)
77	General Recommendation 19	Specific Recommendation 24 (p) of G.R 19 state that measures to protect women from violence should include training, employment opportunities and monitoring of the employment conditions of the domestic workers. (LLth Session, 1992)
78	General Recommendation 19	Specific Recommendation 24 (q) of G.R 19 state that state parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence. (LLth Session, 1992)
79	General Recommendation 19	Specific Recommendation 24 (s) of G.R. 19 state that State Parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken. (LLth Session, 1992)
80	General Recommendation 19	Specific Recommendation 24 (t) of G.R. 19 state that State Parties should take all legal and other measures that are necessary to provide effective protection of women against gender based violence. (LLth Session, 1992)
81	General Recommendation 19	Specific Recommendation 24 (t) (1) of G.R. 19 state that the measures should include effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence. (LLth Session, 1992)
82	General Recommendation 19	Specific Recommendation 24 (t) (ii) of G.R. 19 state that the measures should include preventive measures, including public information and education program to change attitudes concerning the roles and status of men and women. (LLth Session, 1992)
83	General Recommendation 19	Specific recommendation 24 (t) (iii) of G.R. 19 state that the measures should include protective measures including refuges, counseling, rehabilitation and support services for women who are the victims of violence and who are at risk of violence. (LLth Session, 1992)
84	General Recommendation 19	Specific Recommendation 24 (u) of G.R. 19 state that State Parties should report in all forms of gender based violence, and such reports should include all available data on incidence of each form of violence and on the effects of such violence on the women who are the victims. (LLth Session, 1992)
85	General Recommendation 19	Specific Recommendation 24 (v) of G.R. 19 state that State Parties should include information on the legal preventive and protective measures that have been taken to overcome violence against women and on the effectiveness of such measures (LLth Session, 1992)



86	General Recommendation 24	Background Point no 6 of G.R. 24 state that special attention should be given to health needs and rights of women belonging to vulnerable and disadvantaged groups including Refugee, Internally Displaced Women and Girl Child.
87	General Recommendation 24	Key Element no 13 of G.R. 24 state that " it is duty of the State Parties to ensure on basis of equality between men and women, access to health care services, information and education implies an obligation to respect, protect and fulfill women's rights to health care. State Parties have responsibility top ensure that legislation and executive action and policy comply with these three obligations. State parties should also put in place a system, which ensures effective judicial action. Failure to do so will constitute to violation of Article 12 of Convention.
88	General Recommendation 24	Key Element no 15 of G.R. 24 state that " the obligation to protect rights relating to women's health requires state parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations".
89	General Recommendation 24	Key Element no 15, point (a) of G.R. 24 state that " State Parties should ensure enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services
90	General Recommendation 24	Key Element no 16 of G.R. 24 state that State Parties should ensure that adequate protection and health services, including trauma treatment and counseling are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.
91	General Recommendation 24	Key Element no 17 of G.R. 24 state that State Parties should organize government processes and all structures through which public power is exercised to promote and protect women's health and report on it and that the State cannot absolve from its responsibility by delegating or transferring the powers for health care to private actors.
92	General Recommendation 24	Key Element no 17 of G.R. 24 state that State Parties should include in the report information on positive measures taken to curb violations of women's rights by third parties, to protect their health and the measures they have taken to ensure the provision of such services.
93	General Recommendation 24	Key Element 21 of G.R. 24 state that State Parties should take measures and report on the effectives of the measures taken to eliminate barriers that women face in gaining access to health care services which also include distance from health facilities and absence of convenient and affordable public transport.

94	General Recommendation 24	Key Element 25 of G.R. 24 state that State Parties should take appropriate measures to ensure that health services are sensitive to needs of the women with disabilities and are respectful to their human rights and dignity. The mental disabilities include groups of women who are under risk of mental health including women who face gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation

SOURCES OF INFORMATION

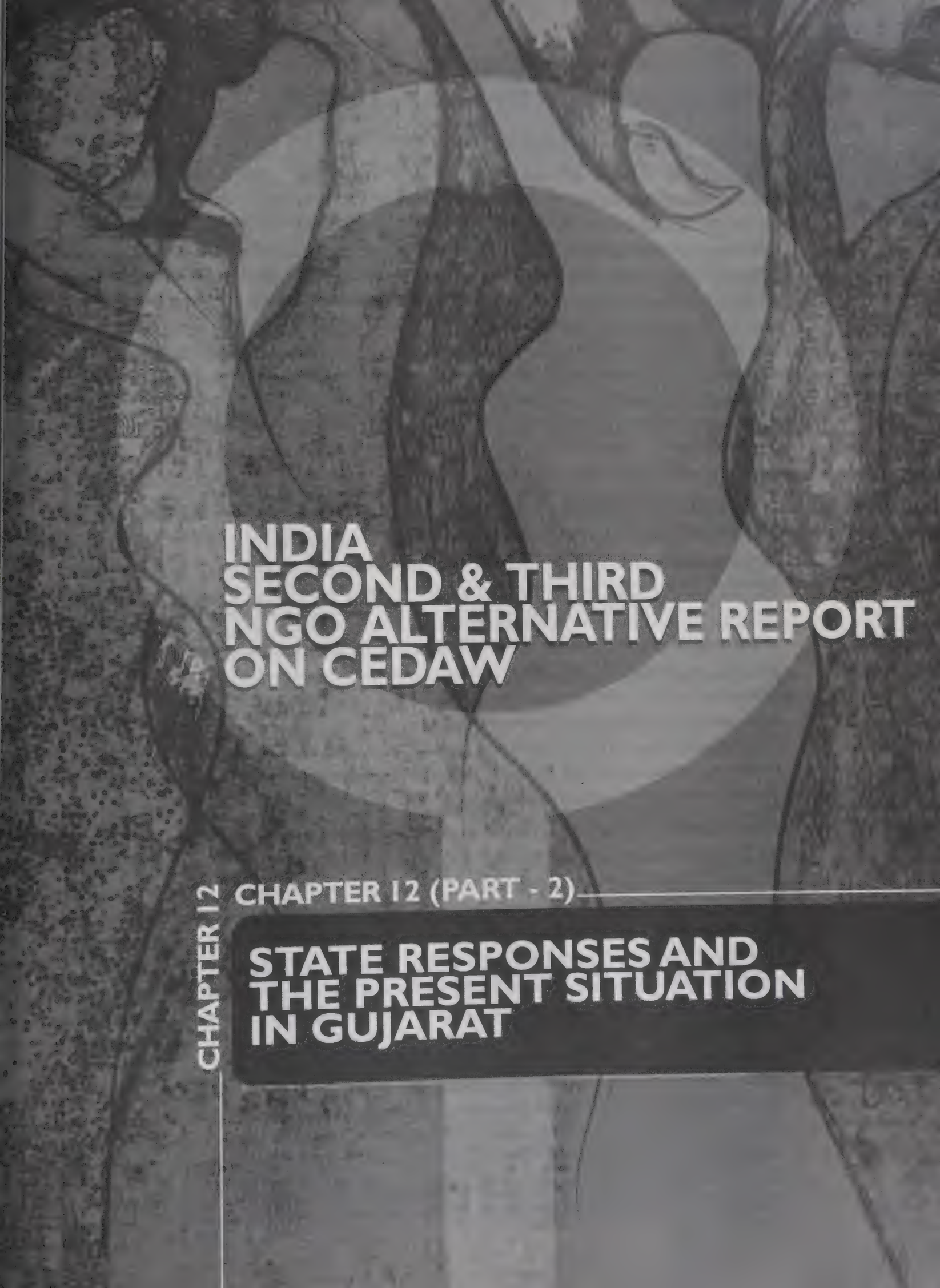
Primary Source

1. Internally Displaced Persons settled in Bombay Hotel, Vatva, Ramol
2. Families resettled in areas of Naroda Patiya and Gomtipur
3. Experiences of SAHR WARU

Secondary Source

1. News Reports of The Times of India
2. Application Submitted to G.T. Nanavati and K.G.Shah Commission
3. Application submitted to the National Human Rights Commission by Mr. Digant Oza
4. Reports by Muslim Organizations involved in providing Relief and Rehabilitation to the Survivors of the Gujarat Carnage 2002
5. General Resolution by the Government of Gujarat
6. Ongoing Distributions of the pamphlets by the Right Wing Communal Forces





INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 12

CHAPTER 12 (PART - 2)

STATE RESPONSES AND THE PRESENT SITUATION IN GUJARAT



STATE RESPONSES AND THE PRESENT SITUATION IN GUJARAT

FOUR YEARS AFTER THE CARNAGE IN GUJARAT

The carnage in Gujarat in 2002 cost nearly 2000 lives, destruction of property, livelihoods along with persecution and displacement of the Muslim community. The scale, nature and gravity of sexual violence during the carnage along with the state apathy in securing justice on this issue, led the a number of prominent citizen's from India to seek an extraordinary intervention by the CEDAW on gender based violence and the gendered impact of violence. Following these submissions, the CEDAW communicated thrice with the government of India to seek additional information on Gujarat along with its next periodic report that was over-due. The present update aims to assist the CEDAW in the forthcoming review of India in January 2007, four years after it was perpetrated. The update aims to draw attention to the nationally prominent state responses in these four years, to assess their relevance in terms of securing justice to women. Additionally, it illustrates the forms in which discrimination has become entrenched against the Muslims in the state of Gujarat, their marginalization and its impact on Muslim women. This update provides the context in which the CEDAW is urged to seek questions, information and clarification to include Gujarat in the forthcoming review.

1. OVERVIEW AND ASSESSMENT OF STATE RESPONSES TO GENDER BASED CRIMES IN RELATION TO THE GUJARAT CARNAGE BETWEEN 2003-2006

1.1 Law Reform initiative: A Bill towards enacting a special law preventing communal/ sectarian violence:

The importance of an enactment to address communal violence is can only be emphasized in view of the political climate in India that continues to be marked by the dominance of Hindu right wing forces. There is increasing evidence of violence against religious minorities, particularly Muslims. The carnage in the State of Gujarat in 2002 has been followed by a spate of communal incidents in the towns of Mau (Uttar Pradesh State) in 2005 and in Baroda (Gujarat State), Aligarh (Uttar Pradesh), and Bhiwandi (Maharastra) in 2006 - each incident has targeted the Muslim community. This legitimizes the fear of recurrence of gender-based violence as part of planned communal attacks in the future. The State has failed to take action to prevent the violence in the form of adequate legislation that would give greater powers to civil society to prevent violence and to seek justice and reparation when it does.

The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005 was introduced in Parliament in December 2005. The aims, objectives and provisions of the bill explicitly strengthen the State Government, protect public servants from actions done in course of their work but not the citizens. Given that the State Government sponsored the events of Gujarat such a legislation is an eyewash. Further, the Bill entirely fails to address the serious gender-based violations which have become a familiar part of all communal conflagrations in India. The Bill continues to apply an out-dated definition of rape to capture the multiple forms of brutal sexual violence which have been documented in India in recent times and which formed a critical part of the Gujarat carnage. These include sexual crimes such as public and mass acts of sexual violence; and gender based crimes such as cutting of breasts and uterus, forced nudity, stripping and parading women naked, forcible pregnancy, exhibiting sexual organs in the presence of women and mutilation of women's genital organs. Thus incorporating rape alone as a crime - as defined in section 375 of the Indian Penal Code would be grossly inadequate. Indeed the IPC definition of 'rape' has proved inadequate even to respond to sexual violence in 'normal' times. The Bill makes no note of the need to develop evidentiary standards appropriate to the context of a communally charged and violent situation for proving sexual violence. This is particularly in view of the fact that in situations of communal violence, women's access to police stations (for lodging FIR), government hospitals (for medical examinations) and the confidence /

ability to pursue legal procedures is substantially reduced during the period of the violence and continues to be so till the return to a safe and non hostile environment. Hence, appropriate evidentiary and procedural standards are imperative. In summary, this Bill, if enacted into law will entirely fail to protect minority women against crimes in the future. The Bill also fails to introduce a language of entitlement and State obligation as outlined in the internationally recognised concept of 'reparations'. Instead the Bill operates only within the limited concepts of 'relief' and 'rehabilitation'

1.2 Justice for the Crimes of Gujarat 2002

In terms of justice for the events of Gujarat 2002 - in which over 2,000 Muslims were massacred and hundreds of Muslim women were subjected to the most brutal forms of sexual violence - the State and Central Government have both entirely failed to take any pro-active steps to seek justice for the survivors. A total of 4208 cases were registered after the carnage. Charge-sheets were filed in just over 2100 cases. According to information available up to January 2006, 345 cases were disposed off with just 13 convictions. There were acquittals in 332 cases[1]. Trials in 14 major incidents of communal violence which took place in Gujarat have been stayed by the Supreme Court of India, pending the Court's ruling on a series of prayers which include demands for impartial enquiry by Central investigative agencies. It has already been over 4 years since the crimes took place.

A] Crimes of sexual violence:

Despite the scale of the sexual violence (which was documented in detail by women's rights and human rights groups), women's groups were able to track down only 6 rape cases in 2002 known to have been registered[2]. Till today, despite the passage of time, the State Government and State Police have been unable to provide a figure which indicates the scale or nature of the crimes against women. So, we continue to rely on information sourced by diligent activists. **Not a single conviction for sexual violence has taken place.**

The current status of these cases (mentioned above) where the rape charge has been applied is as follows:

- Two cases where the rape charge (section 376 of IPC) was applied are among those where trial has been stayed by the Supreme Court of India
- In one case the trial has been completed at the Sessions Court, but the Judge has refused to give his final orders for over 6 months. There is an appeal pending in the High Court.
- Three cases - case is still at the trial stage

B] Bilkis Yakub Rasool gang-rape cum murder case

Among the cases still at the trial stage is the gang-rape and multiple murder case of Bilkis Yakub Rasool. Over a year after the incident, her case was officially closed by the local police, who cited inconsistencies in her statements as the reason. After a protracted battle against the closure, with the support of women's groups Bilkis approached the NHRC which agreed to provide her with legal assistance to file a case in the Supreme Court. The Supreme Court ordered a reinvestigation into the case by the Central Bureau of Investigation and her trial was transferred outside the State of Gujarat to the neighboring State of Maharashtra. The case is proceeding in the Special Session Court in Mumbai, with a judgment expected later this year or early next year.

Bilkis' case has received considerable public attention in India, and been hailed as evidence of the resilience of the Indian criminal justice system and its ability to deliver justice to women. However, it must be noted that Bilkis' case is ONE, among hundreds which were never even recorded. Her case was retrieved from police files entirely due to the diligence of women's rights activists and not due to any action on behalf of the State. It has taken intervention by the Supreme Court of India, a CBI reinvestigation, and a transfer of the trial to a jurisdiction outside the State where the crime was committed in order for Bilkis to feel any hope. This cannot be hailed as the sign of a healthy or committed justice delivery system.



Women's groups and human rights groups believe that a majority of the 2002 cases of sexual violence went unregistered. Most Muslim women are too alienated from the justice system to follow up on violations ranging from arson and looting to the most extreme forms of sexual violence. No special mechanisms have been put in place to record testimonies of sexual violence and support women to come forward. There thus continues to be impunity for the crimes against women committed in the State of Gujarat in 2002.

C] The Best Bakery case: Apathy towards victim and witness protection

The Best Bakery case reflects the punitive pressures imposed on an injured victim/ witness of mass crimes, who succumbs to pressures and fails to assist the Court in prosecuting cases. More importantly, it reflects the capacity of the legal system to address mass crimes in the absence of legal standards expressly designed to address such crimes.

The Best Bakery case involves the forcible confinement of 25 persons in a bakery that was set on fire during the Gujarat carnage. A total of 14 people were brutally killed. Of these, 9 belonged to the Sheikh family. Zahira Sheikh, one of the surviving daughters of the owner of the Best Bakery, who also escaped threat of gang rape is the prime witness to this case. Her statements were recorded on several occasions following the crime and later during the trial in the court of the Additional Sessions Judge, H.U. Mahida [Session case no. 28/2002], Baroda, Gujarat that acquitted all accused. Following this, Zahira Sheikh turned hostile as a witness claiming she had been intimidated and was fearful of her and her family's life. A series of events followed: including filing of an affidavit by her and an appeal in the Supreme Court with the help of an NGO, the Citizens for Democracy and Justice, the failure of the Gujarat state to demonstrate its seriousness in appealing against the trail court's verdict and the intervention of the National Human Rights Commission. These led the Supreme Court to set aside the trial court verdict and direct a re-investigation of the case by the CBI [a central investigation agency], direct re-trial of the five critical cases, including this one, outside Gujarat [in Bombay] and appoint a former solicitor general of India as the *amicus curiae* to assist the court. The re-trial began in October 2004[3], and the judgment was pronounced on 24th Feb 2006, in which 9 accused were sentenced to life while eight others were acquitted on the grounds of lack of evidence. 4 accused are absconding.

A critical dimension of the case is reflected in the Cout's punitive response towards victim/ witnesses for turning hostile during the case proceedings. 7 out of 74 witnesses turned hostile, including Zahira, the key witness. She accused the supporting NGO of having kidnapped her and denied the veracity of the affidavits filed by her in court. Her family members also turned hostile. An enquiry committee established by the Court to look into the allegations found that these allegations were baseless. Following this, notices were issued to Zahira and four members of her family asking them to show cause as to why they should not be prosecuted for giving false evidence, subsequent to which the Supreme Court held Zahira Sheikh in contempt. She has been sentenced to one year simple imprisonment and asked to pay a fine of Rs. 50,000/-. If she is unable to pay the fine, she will be imprisoned for yet another year. Her accounts have been frozen for three months, and are subject to the scrutiny to the officials of the Income Tax Department. Effectively, this may mean that she faces two years of simple imprisonment. She also faces perjury charges from the trial court in Bombay. On 11th March 2006, Zahira Sheikh "surrendered" to the Bombay Court and has indicated her preference to remain in Bombay. The contempt order fails to recognize that a victim of a carnage, faces additional manipulation and pressures as a key witness in a critical case, making her an injured witness more than a hostile witness. Assisting in the prosecution of a key trial, without adequate legal support on witness protection in law, exposes her to influences, pressures and intimidation that make sound judgment extremely difficult. The stringent sentencing of Zahira Sheikh reflects the legal system's apathety to the manipulative and insecure context in which a victim of a communal carnage participates as a witness to mass crimes.

1.3 Status of Rehabilitation for Gujarat 2002

The State and Central Governments continue to abdicate their responsibility to rehabilitate those who lost their homes and business establishments. Immediate after the carnage over a lakh and half Muslims lived in refugee camps across the State of Gujarat. The Government officially recognized these camps for approximately 4 months, after which it withdrew any support and forced people to cope on their own. The NHRC Annual Report 2003-2004 estimates 4790 Muslim families were still displaced[4]. Civil society groups believe this is a conservative estimate and the figure is closer to 10,000 families still internally displaced[5]. The State has refused to take any responsibility for rehabilitation and all displaced people live in resettlement colonies constructed by community members themselves. The State has even refused to provide basic civic amenities in these colonies and the residents live without access to regular, clean water, health facilities, proper roads, or educational facilities for their children.

The National Human Rights has this to say in its recent report,

"The Commission has continued to be concerned about the relief, rehabilitation and resettlement of the victims of communal violence in the State of Gujarat who were displaced following the post-Godhra riots. The Commission has proposed several measures in that behalf. However, the experience of the Commission has been that the State Government in responding to the recommendations of the Commission regarding the relief and rehabilitation of victims has been less than forthcoming or cooperative, with the result that the efforts of the Commission have not led to initiation of substantial additional measures or even speedy measures relating to relief, rehabilitation and resettlement of the unfortunate victims." [6]

1.4. Status of Compensation for events of Gujarat 2002

The amount of compensation paid to the victims of the carnage in 2002 was grossly inadequate and neither the State nor Central Governments have stepped in to improve this situation in the intervening years. Illustrative of this gross, willful neglect are the following facts: In the case of damage to houses, though the maximum limit of compensation fixed by the State Government was Rs. 50,000 [approx Rs. 45 = 1 USD], the average compensation being paid for a fully damaged house was only Rs. 6678.28 in rural areas and Rs. 8554.58 per house in urban areas. According to the report of the police agency the total damage to property (including houses, businesses, vehicles and other property) was estimated to be Rs. 687.34 crores. However, the State Government had distributed only Rs. 56.37 crores or about 9% of the loss.[7]

2. CONTINUING DISCRIMINATION AGAINST THE MUSLIM COMMUNITY

Muslims across the State have been deliberately ghettoized and continue to suffer an economic and social boycott. Muslim women have been hardest hit by this context, trapped in denial of justice, continuing discrimination by the state and the growing fundamentalism within the minority community. Younger women, in many cases, are have reduced opportunities than their mothers, or the women of the previous generation. Muslim women have been the worst sufferers. In the entirely polarized climate in the State of Gujarat, Muslim women fear to step out of their ghettoized spaces to access government schemes, civic amenities including schools for their children and health facilities elsewhere. Their mobility is restricted in the name of honour or sometime because of genuine fear. According to a recently conducted survey by an NGO in one of such resettlement area, only 5% women said they go out to meet friends or for entertainment! 82% women have said they would like to marry off their daughter at the age of 15 to 20! Continuing discrimination is manifested in the following ways:

2.1 Civic Amenities and State Services

The lack of civic amenities is not restricted to resettlement colonies alone. For example, Juhapura the largest 'Muslim Ghetto' in Ahmedabad with a Muslim population upward of 3 lakhs does not have a single bank. The Primary Health Centre was shifted from here to the majority community's area. The state transports



buses do not pass through this locality and would rather take a much longer route! There is no public park, library in Juhapura, a facility that most Hindu localities enjoy.

2.2 Reduced Access to Secular Education

With regard to education, most resettlement colonies are on the outskirts of town, where there are no schools. There are several reports of Muslim students being denied admissions in reputed schools for fictitious reasons. After the carnage upper class or middle class Muslims have become more conscious about education but among the poor and daily wages earners there a reverse trend is evident. Again girls have been negatively impacted. They are compelled to discontinue schooling because of fear, discrimination, poverty or because there is no good school around. While there are no government schools in Muslim majority areas there is an increased presence of schools run by religious organizations. Several religious institutions that provided shelter to the victims have started Islami school. People have no choice but to send their daughters these schools. With the state not providing secular spaces for education, the gap is being filled by the religious organizations. But then it is the Muslim community that is routinely blamed for being regressive!

Neither the State nor Central Government has initiated any confidence building measures to bridge the divides between the Muslim minority and the Government.

2.3. Livelihoods

As far as livelihood issues are concerned, not only has the Government taken no steps to restore the destroyed livelihood options of the victims, on the contrary it has allowed the ground situation to develop such that Muslim majority localities are now commonly termed as 'Negative Zones', where banks and financial will not enter and Muslims living in those areas are regularly denied loans for housing, business or may be education loans are denied to Muslims. There are reports that Muslim vendors are harassed in the old city in the name of encroachments, whereas similar vendors in areas dominated by the majority community have been allocated stalls to conduct trade. According to media reports Muslims are being systematically denied employment opportunities in the recently launched National Rural Employment guarantee scheme. Again media reports show that the economic boycott against the Muslim community is still very much in place.

End Notes

[1] Information based on an affidavit filed in the Supreme Court by Mr. C.B.Trivedi. Deputy Secretary, Dept of Home, Government of Gujarat. January 4, 2006, in Crl. MP No: 3741 & 3742 of 2004 (Arising out of Writ Petition (Crl) No: 109 of 2003)

[2] Mentioned on page 7 in the 'Submissions to the CEDAW Committee' by the Citizen's Committee for Extraordinary Report on Gujarat, India. May 2003

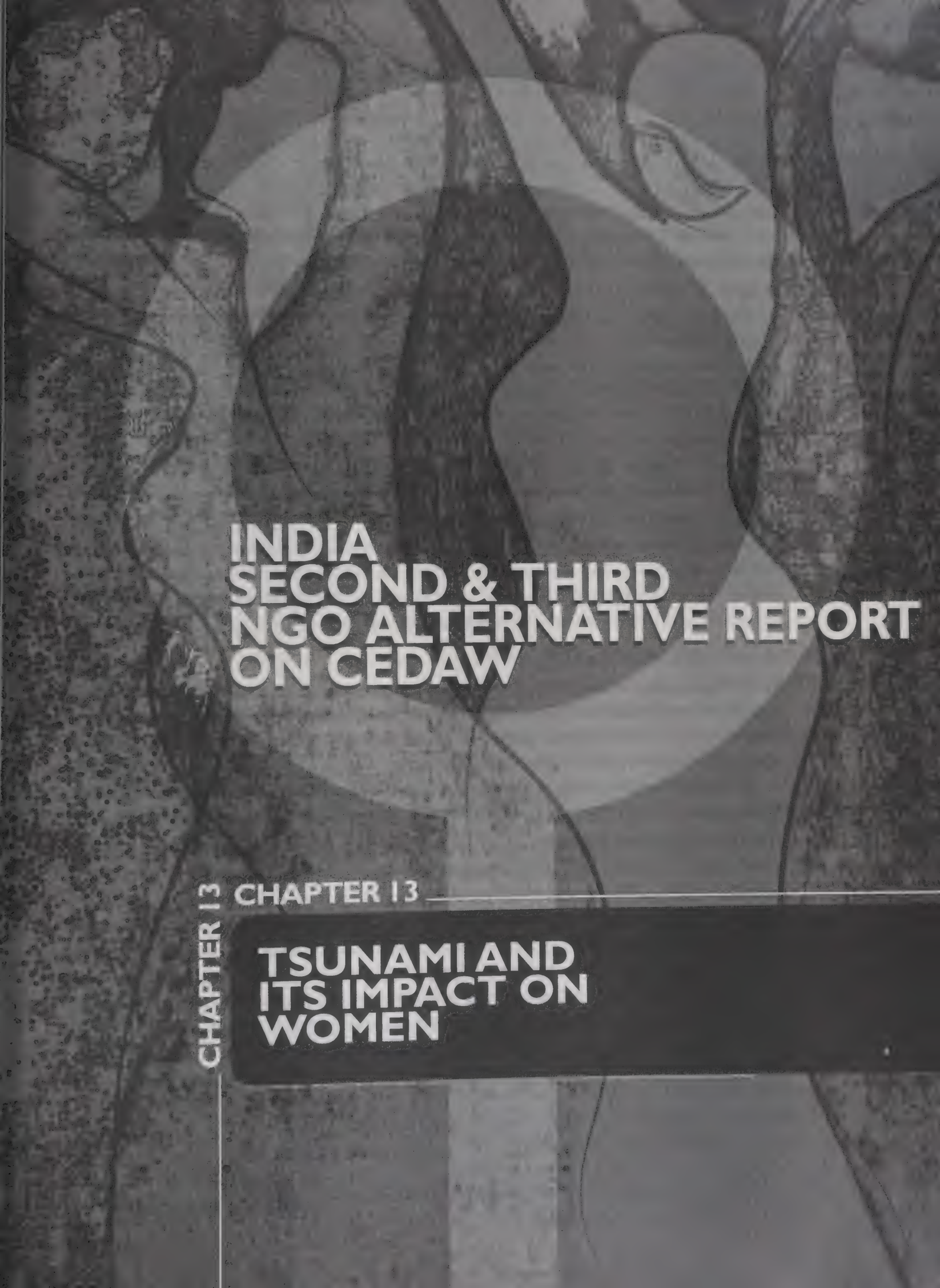
[3] Additional Sessions Judge Mr Abhay Thipsay was appointed to conduct the retrial at a special court in Mazgaon in South Bombay. Four extensions were sought, the last of which was to end on February 28. The chargesheet was filed on September 22 and the trial began on October 4, 2004. Rs. 50,000 is to be paid in fine to the wife of Kaushar Ali, who is Zahira's maternal aunt, visiting the family after the death of the father.

[4] NHRC. Annual Report 2003-2004. P 21.

[5] *A Status Report on Rehabilitation of Victims of Communal Violence in Gujarat in Year 2002:* A Study based on the UN Guiding Principles of Internally Displaced. November 2004. Prepared by the Centre for Social Justice, Ahmedabad with the Guidance of the Monitoring Committee constituted by the NHRC. P. 18

6 NHRC Annual Report. 2003-2004. Pp 18-19

[7] NHRC. Annual Report 2003-2004. P 20



INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 13

CHAPTER 13

TSUNAMI AND ITS IMPACT ON WOMEN



TSUNAMI AND ITS IMPACT ON WOMEN

This chapter attempts to critically look into the gaps and challenges of the relief and rehabilitation mechanism offered by the State and various civil society organizations in the context of Tsunami disaster that had wrought on the lives and livelihoods of the people , with a sharp focus on women's health. It highlights how women have been severely disadvantaged due to lack of integrating women's concerns - both immediate and long term - in the relief and rehabilitation process. It exposes critical systemic gaps and brings a gender focus in the analysis of disaster mitigation and response. Looking at the disaster through women's eyes can help identify key issues for policy makers, planners and practitioners .

We reflect an understanding that men & women reveal vulnerabilities peculiar to their sex, when confronted by disaster situation. Differential impact of disasters on women is a crucial issue almost sidelined by the initiatives taken by the government as well as civil society organisations. Our analysis initially looks at the death loss and material loss in the disaster from a gendered lens and also evaluates the relief and rehabilitation process in terms of its degree of gender sensitivity. Again, it may be stressed here that Tsunami has opened up a space for intervention in terms of integrating gender dimensions into a society with strict patriarchal norms, practices and institutions and requires certain structural changes in the existing arrangements. Hence, the interventions need not essentially be in bringing back the status quo, rather it has to be viewed as a cite for engendering the lives to a possible manner.

Dalits have been ostracized in the aftermath of Tsunami in terms of relief and rehabilitation. Though coastal communities have suffered alike, the rehabilitation mediated through class, cate and gender considerations have not reached the Dalits. The affected communities divided themselves between Dalits and fishing communities though there are Dalits engaged in fishing, mostly in backwater fishing. Among women, Dalit women are one of the most vulnerable groups among affected women.

13.1. GENDERED IMPACT OF INTERVENTIONS

The high percentage among the dead and missing in the wake of tsunami are women and children. In Cuddalore district of Tamilnadu, the number of women killed, over numbered Men by three times. In Pachaankuppam village in Tamilnadu, all the people to die were women. Local survivors cite various reasons why this may be so. When the tsunami hit, many men were fishing at sea while the women were waiting near the shoreline for the boats to come in with the catch, which they would collect, clean, and then take to the market to sell.

While patriarchal attitudes disadvantage women in their normal lives, in a disaster situation, the disadvantages women suffer become more acute. The relief measures announced by the government too were loaded with this bias. Since the government distributes and implements relief measures on the basis of household list approved by the local community, most of the relief materials and entitlements did not reach women. Single women were not even enumerated in the list of beneficiaries. Disaster left them at the margins of destitution. Women - headed households were neglected as the prevailing patriarchal attitudes of the local community which recognized only male members as the head of a household, did not recognize single woman as constituting a separate household. This has endangered the social and economic security of the women victims of Tsunami-disaster. Women in the male-headed households too were discriminated as no part of relief materials and money is handed over to them directly. Besides, the loss assessment surveys do not show the jewels and small savings of women. The loans taken by women also have not been waived. In the efforts of restoration of livelihoods, while fisher-folk and their occupational assets, boats and nets, are in focus—and justifiably so—one hardly hears about the restoration of petty shops and tailoring machines which were owned and run by the affected women. The absence of equity approach in the distribution of dry ration has put the larger households at risk of hunger and starvation. The inadequacy of food in larger households is to impact more severely on women, especially old women, and girl children, as they are the last ones to eat.

In view of the missing and dead children, many women have been under the community pressure to recanalise in order to be able to conceive, endangering their health and resulting in multiple reproductive health problems.

There is no decision making power with women. It is feared that if women will be empowered enough to take decisions, they will start asking too many questions about the appropriateness of certain practices both at home and at the community level.

Figures collated by Oxfam show that the Tsunami in the worst affected districts killed more women than men.

In Nagapattinam, the worst affected district of Tamil Nadu in South India, government statistics state that 2406 women died compared to 1883 men.

In Cuddalore, the second most affected district, almost three times as many women were killed than men with 391 women dead, compared to 146 men.

In Devanampattinam village in Cuddalore for example, 42 women died compared to 21 men. In Pachaankuppam village the only deaths were those of women.

A common thread runs through the different regions that explain the gendered nature of the tragedy. Women stayed behind to help the children and the elderly when the waves struck. Women did not have the strength to hold on to a child and also hang on to a tree or something else to save themselves from being battered to death. In all the places, it was evident that women lost their precious minutes as they tried to gather all their children before attempting to flee for their safety and thus lost those crucial moments. The gender code of dress and hair - Saree and long hair of women became death trap for them as both hampered the fast movement the situation had demanded.

13.2. RELIEF AND REHABILITATION: THROUGH GENDER LENS

Women who survived and housed in the camps have found the shelter arrangements insensitive to their specific needs to a greater extent, both biological and gender based. Though the lack of proper health care affected people in general, its impact was more severe on women as they are vulnerable to reproductive and sexual health problems. The lack of sanitation facilities in the relief camps and later on in temporary shelters had placed women and children at the risk of multiple infections. Particularly women and girls faced immense problems due to their need for privacy when defecating. Lack of women medical officers, gynaecologists and pediatricians at the camp sites to address health needs of women, particularly pregnant and lactating women, babies and young children shows the existing ignorance of the specific requirements of different categories of the population that has resulted in the denial of health rights of these categories.

Relief packets supplied by state and civil society organizations were again not gender sensitive, probably due to lack of awareness about gender specific needs of women across different ages. Absent in the package were sanitary napkins, inner garments. The denial of sanitation facilities and women specific clothes were just not discomfiture for women but had denied them their human right of a life with dignity and security. The denial was a gender-based discrimination springing from a gross lack of awareness on the part of institutions about the gender specific needs of women as a result of the unequal power relations between men and women.

Among the affected communities, single women and female-headed households emerged as the most vulnerable groups existing in the zone of destitution. These women are excluded from the official list of beneficiaries, **as the local patriarchal communities do not recognize women as heads of household.** Women- headed households were thus excluded from relief measures that severely disadvantaged them. Women in the male- headed households too are discriminated as no part of the relief money and material is handed over to them. Our focus group discussion with the affected communities brought out the glaring lack

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of equity concept or distributive justice in state's approach to distributing relief materials, especially dry ration, contributing to escalating tensions at the household as well as community level.

The loss assessment surveys do not show the jewels and small savings of women. The loans taken by women also have not been waived. In the efforts of restoration of livelihoods, while fisher-folks and their occupational assets, boats and nets, are in focus—and justifiably so—one hardly hears about the restoration of petty shops and tailoring machines which were owned and run by the affected women. The absence of equity approach in the distribution of dry ration has put the larger households at risk of hunger and starvation. The inadequacy of food in larger households is to impact more severely on women, especially old women, and girl children, as they are the last ones to eat.

The rehabilitation is based on the property concept and not on the labour concept. While Tsunami has devastated the coastal economy, the rehabilitation process has concentrated only on one of its components: Fishing communities, while not looking into the other components such as fish sellers, petty shop owners, salt pane workers, small workshops etc.

Again, the housing does not address the needs of women who are responsible for household management. Kitchen, which is entirely a domain of woman, is the most neglected space as it is used as a junk room and does not have even basic facilities like chimneys to let the smoke out.

The absence of specials yards for drying and selling fish affects the fishing women most as they depend on processing and selling fish for income generation. Hence there is an urgent need to construct the same.

13.3. TSUNAMI MARRIAGES

The Tsunamis of marriages, an aftermath of Tsunami, is an issue which demands immediate attention in all the affected communities cutting across religion, caste and class.

Dowry consideration has led to a spurt of Tsunami Marriage. In the hard times reduced expenses for marriage are socially expected. Taking advantage of this, young girls are being married in a hurry, thus depriving them of their rights to education and reproductive health.

Widowers in the age group of 40-50 are getting married to young girls aged 14 -18. It will have adverse psychological and physical impacts on adolescent girls and escalate violence and family tensions too. One of the reasons for these marriages is the socially defined gender role of women as responsible for reproductive work: managing household and children. Semi orphaned children need mothers and hence remarriage of widowers.

"At least a young girl marrying a young man is better, in our area elder men most of whom have lost their wives in tsunami are marrying girls so young that in one particular marriage the children of the guy are elder to his new wife," says a field worker, working with an NGO in Karaikal.

The incentive of a permanent home promised to newly married couples by the government combined with the idea of getting an emotional anchor by way of being part of a family are the main reasons behind the observed mass marriages after Tsunami disaster in towns like Nagapattinam.

Tsunami Marriages are on the increase. Young adolescent girls are married off to the widowers, though they are mentally and physically not prepared for the marriage. This in turn deprives them of the opportunities for education and a variety of life options that could have been achieved. Now, the questions that come up are Why do women have to undergo such treatment? Why are women not allowed to realize their potentials? Why should parents give way to the community pressures?

When the government realized that the scheme may backfire, it stopped the help and also instructed people not to indulge in child marriages. But the damage was already done. Hundreds of child marriages across the coast had taken place by then and is still continuing in a sporadic manner.

A few men marrying again because wife has been sterilized, and children have died leaving women in more vulnerable positions.

13.4. HEALTH ISSUES

Recanalisation

Women are being blamed for children's deaths and there is heavy pressure on them to go in for recanalisation to have children irrespective of their health conditions.

Under the pressure of the community to have children over those women who are left with no children resulted in opting them the reversal of sterilisation, a process called 'recanalisation.' The surgery would help reconnect the fallopian tubes, which had undergone 'tubal legation' during sterilisation to block the pathway of the ovum. This drive picked up speed after the Chief Minister of Tamilnadu, announced that the state would extend full assistance for those who lost their children in tsunami and desired to undergo recanalisation.

> **Health and Family Welfare Department Policy Note - 2005 - 2006 Demand No.18**
>
> The Hon'ble Chief Minister has ordered that recanalisation may be done to the parents who have undergone tubectomy or vasectomy as the case may be and whose children lost their lives in Tsunami, at notified Government hospitals and private hospitals of their choice. The private hospitals which perform the above surgery would be paid Rs.25,000 per case.

The chances of success in recanalisation is 30 per cent, say experts. "Many of the affected women are over 35 years and in most case they have undergone sterilisation more than five years back. Also, much depends on how skillfully the tubectomy (sterilization involving legation of the fallopian tubes) was done, And, if the tubes had been cut too much without adequate length, then there is a good chance of 'ectopic' or tubal pregnancy, which would be dangerous for the mothers.

With the Tamil Nadu government offering free reversals of tubal ligation, also known as tubectomy, to women who lost their children in the tsunami, family planning experts say it's a sign of the Indian government's failure to promote easily reversible contraceptive methods such as the pill, IUDs and condoms. So far, 189 women have signed up for the recanalisation. The government's move has, however, opened up a can of worms, with population experts claiming that, nationwide, more than two-thirds of India's female contraceptive users rely on tubectomies and that women are not given proper counselling on which form of birth control to go in for. Many women are coerced into undergoing permanent sterilisation in order to meet population targets. In the context of the current critique on family planning methods completely focusing on sterilisation, without providing adequate information about other available methods, it would have been possible to avoid many of the registered recanalisation surgeries.

Again, the state package *for* recanalisation is offered when the normalcy of life has not yet been restored, which is one of the preconditions for delivering a healthy baby. Also, there is a high reporting of reproductive health issues among women that obviously raises questions on child bearing and likely consequences.

Concerns are also being raised about the fact that the operation does not necessarily guarantee a healthy pregnancy. According to Sheela Rani Chunkath, secretary of the health and family welfare department in Tamil Nadu, many reversals could be doomed because government doctors often cut too much of the fallopian tubes during the original tubectomy in order to forestall legal claims of method failure. One public hospital in Chennai that specializes in the procedure reports that just 47% of its recanalisation patients eventually gave birth again. Many women seeking recanalisation are over 35 years of age.[1]

It is a fact that many of the children lost their parents and became orphans. There are also reports that state government waved the adoption procedures in the case of these children. However, it would have been better if restricting the adoption of these children by the members of the same community and those



who have lost their children. The lack of awareness of practical needs of women as a function of Gender specific roles is reflected in the Gender-neutral temporary shelters. These shelters have not ensured privacy for women and girls. In our discussion with women and girls, most of them had reported that the family spends their day outside as the shelters are too small, dark and have no ventilation. The shelters are not provided with toilet with adequate water, which cause immense pressure on women and girls. There are frequent and increasing incidences of wife beating, kicking and battering as a result of men turning alcoholic to channel their fear and anxieties.

There has been high reporting of Anaemia among women due to their poor intake of food.

Reproductive Health Issues

The disaster impacts on women are long term and far reaching. Reports say that sea sand had got into the uterus of women and what effect it will have on their heath is yet to be known. Pregnant women have gone through high level of trauma and how it will affect the foetus will be known months after the disaster.

Suicides

The hopelessness and vulnerability of the people coupled with the loss of livelihood has led to a vicious cycle of unemployment, increased rate of violence, suicides and death. The men who haven't resumed fishing spend the whole day at home drinking which leads to verbal fights and Harassment of women. All these might have contributed in women committing suicides and needs thorough inquiry.

13. 5. VOICES OF WOMEN FROM TSUNAMI AFFECTED AREAS

- Women were disadvantaged from the beginning. Busy with household chores and caring for the children, they lost precious moments initially. Also they had to pick up the children and run. There was no alert mechanism, which would have given them enough time to get mentally prepared for the emergency evacuation.
- Women-specific needs were not taken into consideration, thus putting them at a disadvantage in terms of physical, emotional and economic insecurities.
- Relief material were distributed as well as collected by men, thus ignoring and discriminating women.
- State was insensitive to their needs and abdicated its responsibility to safeguard the women's interests by making arrangements in the emergency camps for their physical security and providing them safe corners for women specific hygienic needs. It was NGOs who had come to assist them and not the Government officials.
- Due to the lack of physical insecurity, women had to remain alert and awake in the night to protect themselves and their girl children from sexual abuse.
- Dead people were compensated but the fetus, which lost lives were not, thus neglecting women's trauma and health-risks.
- No monetary help was given to women.
- Women medical personnel were not there in the field, putting women at a high level of risk, especially pregnant women.
- A 10*10 temporary shelter accommodates the whole family. It undermines the dignity of women and adolescent girls due to lack of privacy.
- Women suffer from dehydration due to excess sweating as temporary shelters do not have ventilation.
- Toilets and washrooms protect women's health needs and ensure their basic dignity. Women, especially menstruating women, cannot move about in dignity without the provision of toilets. Neither relief

camps nor temporary shelters have washrooms with adequate light and water.

- Due to their Gender Specific role for caring for the children, it is women who are being blamed for the death of their children in the Tsunami. In general, domestic violence has escalated and there are increasing instances of wife beating and battering.
- While widowers are getting married again, widows are not allowed to remarry if they wish to, as it is not a socially accepted practice.
- Women's livelihoods concerns have not been addressed by anybody. No body listens and works for solutions for the basic problem of restoring the livelihoods. Attention is concentrated on restoring the livelihood of fishermen.
- While fishermen auction the catch and have their income, it is women who face the economic hardship because of the fluctuating sell and hence uncertain income. Still women's economic concerns are not addressed by the state.
- Tsunami Marriages are on the increase. Young adolescent girls are married off to the widowers though they are mentally and physically not prepared for the marriage. This in turn deprives them of the opportunities for education and empowerment that come with it. Why do women have to undergo such treatment? Why are women not allowed to realize their potentials? Why should parents give way to the community pressures? These are some of the thought provoking questions asked by a young grass root woman from Karaikkal, underscoring the fact that the gender based roles and stereotyping has massively damaged women's interests in the wake of disaster.
- The demand of vacating the existing houses for relocation is insensitive to the live styles and occupation of the affected women—their lives and movements are closely related with the sea. Hence vicinity to the sea is of critical importance.
- Single women and widows were not included in the community list of beneficiaries.
- Women died more in numbers because they came back to rescue their savings and jewels and were swept away by the giant waves.

13.6. RECOMMENDATIONS

- There should be a separate scheme for the livelihoods of single women
- SHG loans should either be cancelled or be rescheduled as women are taking loans to pay off their loans from SHG, thus getting into the debt trap.
- There should be community based child care schemes, as children need love, affection and care. Just allotting money is not enough for them. Child care home do not have enough care takers to extend adequate support to the children.
- Step should be taken to train women in disaster preparedness.
- Women and young girls should be given training for cycling and provided with cycles to enhance their mobility.
- All wards should display all Government Orders at an accessible place for the benefit of the affected people
- The list of relief and rehabilitation beneficiaries should be printed and pasted in all Panchayat wards for the purpose of verification and effective monitoring
- The equity rather than the equality approach should be made the basis of relief and rehabilitation strategies



- Community participation is only at the Panchayat level and not in the district committees. District level community participation, including women's participation should be ensured.
- There is no direct interface between the concerned officials and the affected community to know the needs of the community, especially women. There should be such interface periodically in order to make relief and rehabilitation people centered.
- Issue a separate Government Order for the affected Dalit communities.
- Tsunami Marriages should be stopped.
- Agricultural workers should be included in the list of beneficiaries as there is massive damage to the cultivable land due to inundation of salt water.
- Permanent health camps need to be established with gynecologists and pediatricians for health care services for women.
- Enumerations of pregnant women and lactating mothers in the Tsunami affected must be given special relief packages, including full nutritional support all through pregnancy/ lactation period.
- The traumatic effect of the disaster on reproductive health must be assessed and special medical care, including necessary scan and psychological counseling must be, immediately, offered to them free of cost.
- Special attention must be paid to marginalised groups of women: widows, women headed households, disabled, aged, minority and Dalit women.
- The government should ban liquor, as it will drain the already marginalized economy of fishing communities and end up in more violence on women. TASMAC stores (Tamil Nadu Govt. run liquor shops) in the affected areas are reported to be having roaring sales due to men making a bee-line to them, with relief amount in their hands and to get over the Tsunami included gloom. The TASMAC centres in the Tsunami affected districts must be closed for at least for a year.
- A sustainable livelihood security strategy should be evolved based on the principles of gender equity and social inclusion with special focus on women led households, single women, widows and old women.
- To ensure women's needs are addressed, involve women in the consultative and decision making processes: from camp administration and disaster management committees to policy making bodies for reconstruction efforts.

13.7. CONCLUSION

Any approach or course of action, when it is rooted in the dominant social norms in the patriarchal social set up, tend to undermine the needs and interests of women. Tsunami rehabilitation has also reflected the same and hence the inadequacy in addressing women's practical needs as well strategic Interests in its practices. A gender just rehabilitation process needs first and foremost presence of gender perspective among all the stakeholders from affected women to intermediary organisation to the policy makers and officials who implement those policies.

The response to this devastation must simultaneously address the urgency of the present and the inequalities and injustices of the past. The special protection needs of women and girls require attention, and the voices and perspectives of women and women's support networks need to be given visibility in national strategies for relief and reconstruction, by aid organizations, and by the State. By responding in this way, we can turn this crisis into an opportunity for laying the foundations of a future where all people can live with dignity, security, and justice.

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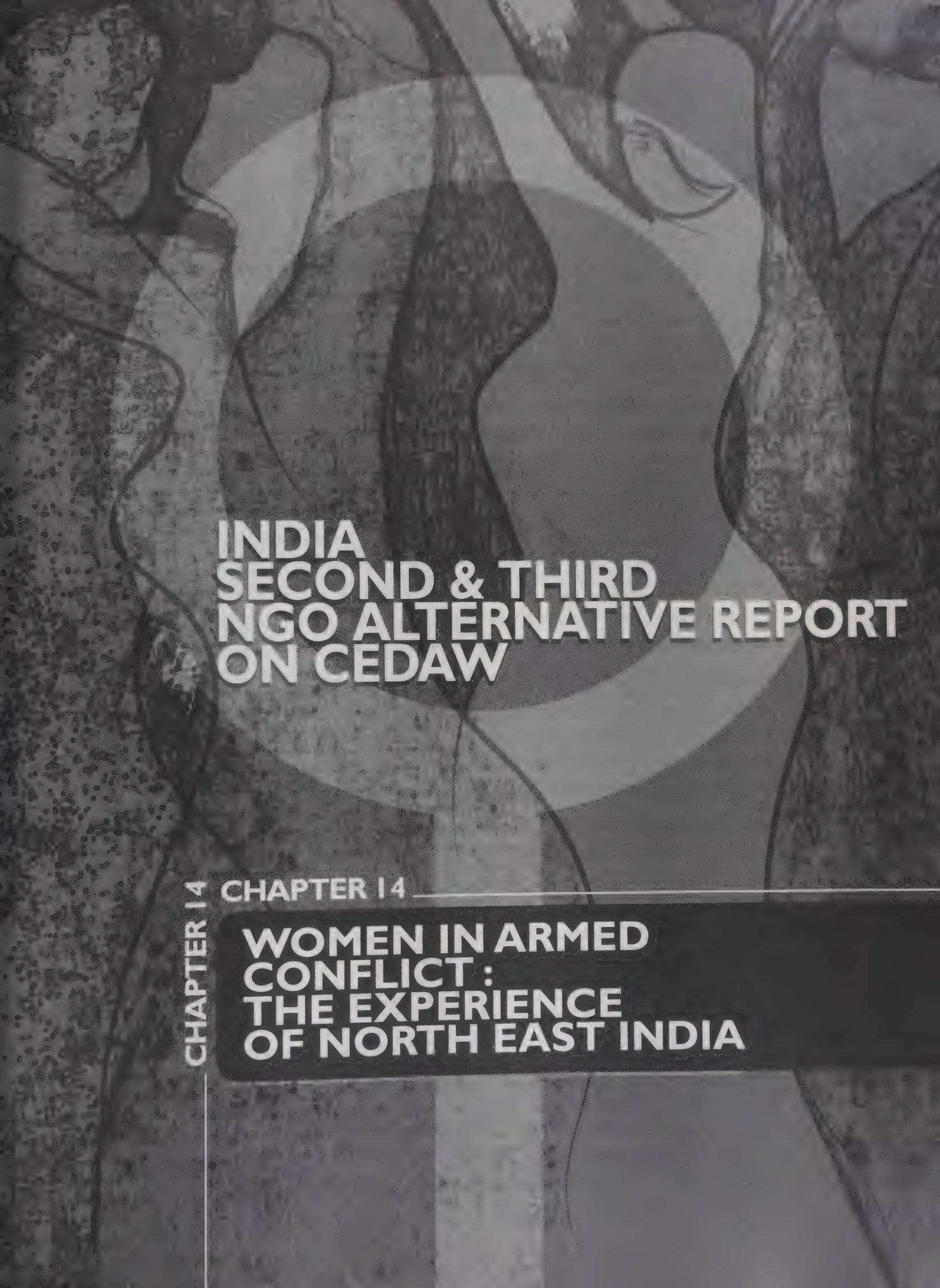
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INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 14

CHAPTER 14

WOMEN IN ARMED CONFLICT : THE EXPERIENCE OF NORTH EAST INDIA



WOMEN IN ARMED CONFLICT : THE EXPERIENCE OF NORTH EAST INDIA

INTRODUCTION

The situation of women in conflict situations evokes several concerns in the Women's Convention simultaneously, and cannot be neatly contained in the space of a single article or recommendation alone. Yet, the crux of the problem that women face in the North East is that of *intersecting forms of violence*.

Violence against women as defined in the Platform for Action means "**any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.**" In the NE region women have been the targets of violence by both State and non-State actors and sometimes this occurs despite assurances given by authorities.

PREVALENCE OF THE PROBLEM

In its concluding comments to the Government of India's initial report, the CEDAW Committee states that

> "The Committee recommends a review of prevention of terrorism legislation and the Armed Forces Special Provisions Act, in consultation with the Human Rights Commission, the National Commission of Women and civil society, so that special powers given to the security forces do not prevent the investigation and prosecution of acts of violence against women in conflict areas, and during detention and arrest. The Committee recommends that women be given an opportunity to make their contribution to peaceful conflict resolutions."

The Committee further recommends the introduction of gender sensitisation and human rights programmes for the police, the security forces and medical professional in addition to the programmes already undertaken.

Armed Forces Special Powers Act (AFSPA), 1958 in the NE region

AFSPA is one of the biggest institutional causes of human rights violations in the NE region. The Act has been intermittently in operation in different states of North East India since 1958. It is important to examine the effectiveness of the Act in disturbed areas. Insurgency and the number of armed groups have increased in the areas the Act is operational in North East India. Disturbed areas are governed under other laws and mechanisms in most other parts of India. Human Rights groups and civil society have been demanding similar treatment to NE region as far as these laws are concerned.

Redress mechanisms are negligible or are undermined in areas under AFSPA, 1958. For example, mandate of the National Human Rights Commission (NHRC) is restricted under section 19 of the AFSPA and NHRC has no power of investigation in those areas. The NHRC is effectively unable to tackle the impunity provided for armed forces and protect Human Rights of the people.

Despite the recommendations of the CEDAW Committee, the continuation of the Armed Forces Special Powers Act has resulted in gross violations of human rights particularly of women and by keeping an atmosphere of relentless aggression alive, has deeply affected the lives of communities in the region.

Manipur State in the North east region of India has for the past years been undergoing turmoil and violence. Much media and public attention was focused on the state of Manipur following the alleged rape and custodial killing of Thangjam Manorama Devi by the Assam Rifles personnel in July 2004. This incident led to such despair and anguish among women of the community that some of them decided to protest in the nude against the continued atrocities and the Armed Forces Special Powers Act in Manipur.

The Act provides near total impunity to the armed forces. There are few possibility of inquiry into the

legality of their action or redress and the Act provides no safeguards against human rights violations. The restrictions under AFSPA on army procedures even override the rights under the Right to Information Act, 2005. The RTI Act covers all of India with the exception of Jammu and Kashmir. Jurisdictionally the Act covers all public authorities. However, it has exempted Assam Rifles under section 21 among other Intelligence and security agencies. Under the RTI Act information relating to corruption and human rights by exempted agencies must be given, but only with the approval of the Central or State Information Commission as the case may be.

Atrocities continue against people by defence and paramilitary forces. Women face additional threat of sexual violence in the various conflict areas in the North East. A list of recent cases of violence against women in Manipur state by defence personnel and armed groups is appended.

From our experience, we are not aware of the armed forces being given specific gender training to operate in a region such as the north east region, where armed violence occurs. The Act gives near total impunity to the armed forces, since no prosecution suit or other legal proceedings can be brought against any defence personnel acting under the Act, without the permission of the Government of India. It has been a difficult task to get information about action against guilty armed forces personnel. Owing to restrictions on information on military operations, it is difficult to ascertain if the armed forces punishes the guilty within its jurisdiction.

Both civil society and human rights activists of the region, as well as international human rights commissions have consistently called for the repeal and review of the Act. Irom Sharmila from Manipur has been on hunger strike since November 2001 demanding the repeal of AFSPA. The *Human Rights Committee* in its concluding comments to the GOI's report on the *Covenant of Civil And Political Rights* (UN 1997) has said:

> "The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant.
>
> **Therefore:**
> The Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant."

Government of India has been following a very rigid stand on not repealing the AFSPA from the North East region. In the wake of widespread protests and lock-outs in Manipur, following human rights violations including Manorama Devi's killing by security personnel, the Prime Minister had set up a Committee (headed by Justice Jeevan Reddy) in November 2004 to review the AFSPA, 1958 as amended from time to time and was expected to submit its report within six months.

We have learnt from the media that the Committee has submitted its report and has recommended the repeal of AFSPA. However, the Government of India is yet to take a decision on the recommendations made by the Review Committee. The report has not been made public either[1]. We recommend that the GOI make the report public and repeal AFPSA. It is extremely crucial that lives and rights of human rights defenders are protected in the North East region. According to latest media reports, the Union Defence Minister has also ruled out repeal of the Act and said only necessary amendments would be made to make it more humane. The Prime Minister also, in his recent statements indicated only amendment, but not the repeal of the Act.

Apathy and Non-Functioning of the Machinery for Redress

Redress for victims of violence and sexual assault is an almost impossible task in an area of conflict due to the non-functioning or apathy of the redress machinery. The problems include the following:



- Refusal or general apathy of police in registering cases, especially when the victim belongs to a minority community.
- Lack or loss of evidence in rape cases. In situations of conflict, where there is general panic and fear, retaining evidence is even more difficult.
- Non-availability of police stations or outposts to lodge complaints.
- Long-drawn, complicated complaints and legal procedures, and inability to meet expenses.

Women's role in peace building

Women have been in the forefront of protesting against atrocities as well as at the receiving end of State violence. However, their role and contributions have been seen in an instrumentalist way both by the government agencies and the non-state agents in the region[2]. Gender stereotyping pervades the attitude of the State and non-State agents while involving women in peace-building processes.

Lack of support services

Mental health suffers most in armed conflict situation. Women go through added psychological and physical trauma during conflict. Therefore the need for psychological and other support services for women living under conflict is extremely important. However, in the northeast these services are almost non-existing and whatever meagre services available are of poor standard. The role of the State is abysmal in providing these services.

Another area of concern is that there has been no effort to ascertain the extent of mental and physical trauma the conflict has caused the people of the NE region and special vulnerabilities of women. This lack of overt acknowledgement of the fallouts of conflict indirectly affect policy priorities, be it the services or budgets planned for the region. Almost all the efforts in documenting impact of conflict have been by the civil society groups. Conflict has further heightened women's vulnerability to HIV and AIDS, trafficking and drug abuse.

Rehabilitation of Internally Displaced people (IDP) in conflict and post conflict areas is another critical issue. Large numbers of IDPs are still living in camps in the post-conflict Bodo Territorial Autonomous District (BTAD) in Assam.

Some Government Initiatives

- **Setting up of a Committee to Review Armed Forces Special Powers Act, 1958**
- The National Human Rights Commission (**NHRC**) established in 1993 plays a significant role in monitoring and investigating human rights violations in the country.
- **Sahyog:** The Assam Police has, in July 2003, launched a new project called Sahyog. Under this project, each police battalion proposes to adopt an economically underdeveloped village near their headquarters and work for the development of the village.
- **Project Prahari:** PRAHARI, which is an acronym for "People for Progress" in the Assamese language, is an initiative of the Assam Police. This project is based on the concept of community policing, and aims at addressing the root causes of social problems, which lead to criminal activity. The project was initiated in Kokrajhar district, Assam to check the high incidence of witch-hunting in the area. The project is now operational in more than forty villages in different parts of the state and aims to cover one village under each police station.
- **Aashwas Project:** Recognising the effect of armed insurgency in North-East India, the Assam Police has initiated a project called Aashwas. Under the project, a baseline study has been undertaken to determine the general trend of impact of violence on children and to identify measures to improve the scenario, and then initiate action on the basis of the findings of the baseline study.

RECOMMENDATIONS

1. **Repeal Armed Forces Special Powers Act, 1958** (Do not to retain the provisions of AFSPA indirectly via any other laws, End impunity in North East, Kashmir and other regions, prosecute the military personnel guilty of violations against people).
2. **Protect lives and rights of human rights defenders and other civilians.**
3. **Implement UN resolution 1325 in North East Region and Kashmir.**
4. Strengthen support services for women in conflict areas.

Appendix 1

Acknowledgement: **The following information is collected and compiled by Human Rights Alert, Imphal, Manipur, India**

Violence Against Women

Date	Victim	Place of incident	Perpetrator	Nature of violation
7 August, 2004	Ms. Konjengbam Memita of Keibi Taret Khun		Manipur Police Commando	Killed
18 January, 2005	Baby Pusparani of wangoo		132 CRPF	Killed
16 Septemper 2005	Salam Punam of Nongmaikhong		One suspected PREPAK cadre	Gang raped and murder
27 September, 200	i. Dhanabati (19 rs) ii. Ronica (15 years) of Zouveng	Zouveng road	1st Indian Reserve Battalion	Molestation
30 September, 2005	Ninhneiman (18) of Wakan Village		Imphal West & East police commando and 2nd & 3rd IRB	Detention (for giving shelter Kuki National Army)
9 October, 2005	Th. Sangita of Keinou		7 Assam Rifles	Torture (for stopping her husband from Assam Rifles)
9 October, 2005	Thoi Devi (19)	Dispur	Guwahati Police	Detention (charged as Kangleipal Communist Party (KCP)
9 October, 2005	Rina Devi (18)	Dispur	Guwahati Police	Detention (charged as Kangleipal Communist Party)
9 October, 2005	Roshmi Devi (19)	Dispur	Guwahati Police	Detention (charged as Kangleipal Communist Party)



Date	Victim	Place of incident	Perpetrator	Nature of violation
10 November,	Lianching of old ar Churachandpur	Moirang mkhai Bishnupur District	Bishnupur police commando	Molestation
19 November, 2005	Chuncham Liu (25) of Longmai Village		38 Assam Rifles	Killed during an encounter between Assam Rifles and NSCN (K), UNLF
27 November, 2005	Khaidem ongbi Sangeeta Devi (44) of Nagamapal Phougeisanbam Leikai		Imphal west police	Detention (charged as People Liberation Army)
27 November, 2005	Heisanam ongbi Bijenti Devi (38) of Pishum Oinam Leikai		Imphal west police	Detention (charged as People Liberation Army)
11 December, 2005	Leiphrakpam Sangeeta Sougaijam Rita of Top Awang lekai	Bashikhong Kongba	Residents of the Bashikhon Kongba Irong	Charged them for the assault of some local people by armed group but some locals denied charged
3 January, 2006	Yumnam Samoni (35) Puyam ongbi Khumanbi S. Shushila (50) Kh. Irabati (50) M. Ibemma (32) Th. Jamuna (40) Kh. Ibetombi (45) P. Manishing (50) Rushida Begum (55)	Moreh	24 Assam Rifles	Torture for shouting slogan at the gate of Assam Rifles against the disappearance of Jayanta
9 January, 2006	Thangjam Ronibala 27) of Ukhongshang Mayai Leikai	Picked up from Wangjing Bazar	Thoubal Police Commando	Detention (charged as People Liberation Army)
11 January, 2006	Thuonil of Lungthulien Village, Churachandpur	Lungthulien Village	HPC (D) and UNLF	Injured in the exchange of fire
16 January, 2006	1. Ningthoujam Leima (55) Of Moreh 2.Rita Das (27) of Moreh 3. Khundongbam Ibetombi Devi (38) of Moreh 4. Yumnam Jotibala (45) of Moreh 5. Koijam Sanatombi (50)	Moreh	24 Assam Rifles	Dragging Chaoba (25) against his arrest between Assam rifles and Meira Paibi
21 February, 2006	Maibam Naobi Devi (26) Of Yairipok Leirongthel	Picked up from Khangabok	Thoubal Police Commando	Torture and detention (Charged as a sympathizer of People Liberation Army)

Date	Victim	Place of incident	Perpetrator	Nature of violation
8 February, 2006	Thangjam Shileima Devi (48) of Sagolband Tera Khuraijam Leirak		Imphal west Police Commando	Detention (Charged as KYKL)
21 February, 2006	Zenzaniang of Thanlon Village	In a jungle of Thanlon	Underground Group or Army	Hurt in Improvised Explosive Device (IED) blast
9 March, 2006	Leishangthem Basanti (30) Of Sekmai New Market	At Tadubi Bazar	Unknown armed man	Shot on her leg for non-payment of money demanded by them
11 March, 2006	Maikham Singlai (30) of Laisam Khullen Village	Chingkhan onyer Village, Chandel	Assam rifles and Army	Killed during encounter according to army
19 March, 2006	Pramo of Ningthoukhong Kha Khunou, Bishnupur	Ninhthoukhong Kha Khunou	Personnel Suspected Security	Molestation and attempt to rape
21 March, 2006	Nemjalhing Lupheng (35) Of Maphou Dam	Maphou Dam	2nd Indian Reserve Battalion (IRB)	Hurt in excessive firing
10 April, 2006	(i) Mutum (o) Purnima(25) (ii) Korungbam ongbi Ibetombi of Waithou, Thoubal District	Between waithou And Laimapokpi	Police	Hurt due to excessive forces by police while they blocked road to oppose the opening of army post there
10 April, 2006	(i) D. Chalaniu (ii) W. Kachialungliu of Makui Village	At Chalwa along IT Road	Kuki National Front (KNF)	For refusing to pay business tax (both the women are banana sellers)
22 April, 2006	Miss. Thalerengam Tangkhul of Laikhoiching	Laikhoiching, Lamlai Police Station	BSF and Underground	Hurt in exchange of firing Between BSF and Underground Group
25 April, 2006	Dimkhoman Khongsai(77) Of Lhangjol Village Churachandpur	Lhangjol Village	Kuki National Army(KNA) & Kuki National Front (KNF)	Panic stricken, Killed in firing between Kuki National Front and Kuki National Army
25 April, 2006	Chongjalam (35) of Lhangjol Village Churachandpur	Lhangjol Village	Kuki National Army(KNA) & Kuki National Front (KNF)	Sustained bullet on her chest and thigh



27 April, 2006	Toijam Ranibala Devi of Bamon Leikai Presently residing at old MLA Hostel Q No. 10	Picked up from the Quarter	Police	Detained under National Security Act (NSA) over Sub-inspector, Kumar's Disappearance
27 June, 2006	Th. Menaka (38) of Wangoo	Picked up from her House	People Liberation Army (PLA)	Killed (Charged as informer for army but locals denied)
7 July, 2006	1.Khwairakpam ongbi Tamu of Awang Sekmai	At her house	4 Assam Rifles	Torture (charged as the sympathizer of Kanglei Yawol Kanna Lup)

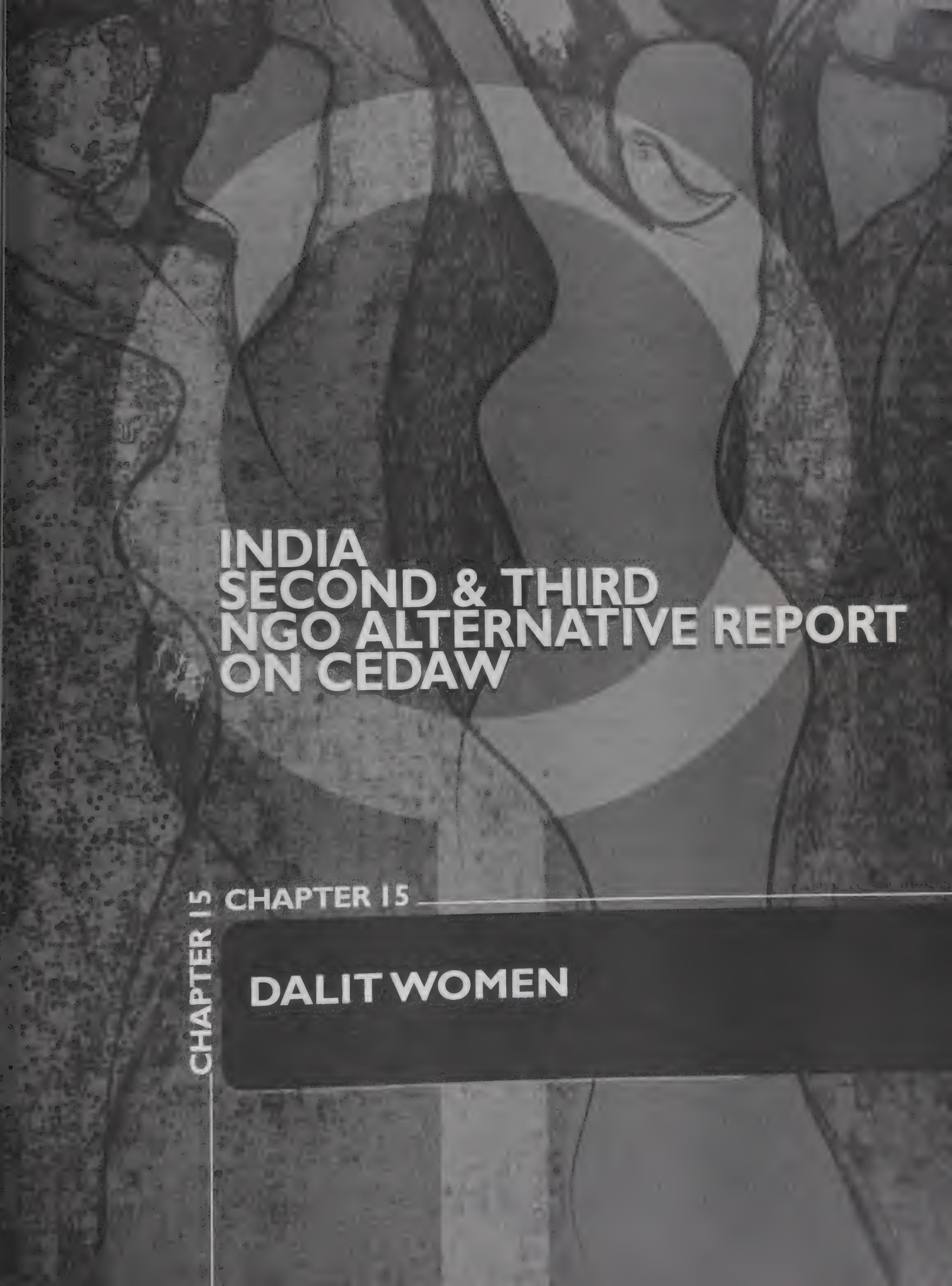
Sources: NEN field studies and consultations

Women in Armed conflict Situations, North East Network (2005)

End Notes

[1] The report has been leaked to the press in October 2006

[2] E.g peace talks between Naga groups and Government of India, and in the negotiation efforts by GOI and groups in Manipur following the agitations in the past years.



INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 15

CHAPTER 15

DALIT WOMEN



DALIT WOMEN

15.1. PREVALENCE OF THE PROBLEM

Violence is central to any discussion of caste. Practices of untouchability represent the extreme contradiction between claims to democracy and the body politic. The violence of caste, it may be argued, is an instrument of power and may be deployed for one of several reasons. First through practices of untouchability, seclusion and social death [which in some instances can also mean the end of life] there is a direct, unquestioned and absolute exercise of power. Second through practices of aggravated assault there is an enforcement of an order that is being resisted in fundamental ways on an unprecedented scale.[1] Third, through practices of sexual violence, battles are literally waged on women's bodies. The twenty-eighth report of the Commissioner for Scheduled Castes and Scheduled Tribes records that between the years 1981 and 1986, there was a steady rise in the murder of scheduled caste and scheduled tribe persons and also an increase in the incidence of rape of scheduled caste women. More recent reports from Sakshi Human Rights Watch, Andhra Pradesh, indicate only a heightening of violence not its abatement or decline.

As against 20% rape cases being registered upper castes only 5% rape cases against Dalit women are registered

Amnesty International Report

Malihabad (Lucknow) - An upper caste landlord rapes a dalit girl because her father wanted to bring a bridal party through the village

May 2001

Kaushambi - Narnagi, a dalit widow was raped at gunpoint. Police registered the case but no arrests were made.

Dainik Jagaran, November 2001

Allahabad - Sushma, a tribal girl was raped Munna Tiwari. At first the FIR was not recorded, then the medical report was not released, then the police Sub-Inspector beat her in the court premises.

Amar Ujala, December 2001

In order to intimidate a dalit woman a policeman snatched her baby from her arms and flung the baby against a wall. The baby died.....The police are not trained to deal with crimes against the vulnerable.

*The Hindu,*December 2002

Crimes against the SC/ST in Uttar Pradesh

	2000	2001	2002
Murder	184	202	187
Grievous Hurt	314	356	377
Rape	169	192	161
Riot	75	98	73
Other IPC	1256	1863	1722
SC/ST Act	1298	1667	1523
Total	3296	4378	4043

On the 28th of April ,2003 the home secretary of Uttar Pradesh announced that in the period May1, 2002 to March 1, 2003 the incidents of crimes against dalits had reduced by 68% in the state. The data from three districts were particularly startling. In Devipatan the figures had reduced by 84%, in Bareilly by 83% and in Jhansi by 77%. Criminal cases had reduced by 45%. In 99% cases proceedings had already been initiated against the accused.

Indian Express,(Lucknow) April 29, 2003

One of the reasons behind the reduced registration of cases in cases of violence against dalit women is the Government Order No. 92 MM/6-Po.-3-2002-25P/2002 in which Article 22 reads as follows:

1. All cases reported by members of Scheduled Castes and Scheduled Tribes will be recorded after verification.
2. All small crimes will be recorded and dealt with according to regular/ordinary laws and only in serious matters like murder and rape will the SC/ST Act be invoked.
3. All cases of rape will be recorded after being established by a medical report.

This Government Order is a serious breach of Constitutional rights of dalit especially dalit women because they are being deprived of due process of law

This Government Order is violative of the provisions of the Scheduled Castes and Scheduled Tribes Act (1989) because it empowers the police to establish the truth, a right that belongs to the judiciary.

This Government Order has still not been revoked.

15.2. CEDAW and Dalit Women

Close examination of the Convention itself reveals gaps in the full access to and enjoyment of equality on the part of Dalit women especially with regard to the following sections:

15.2.1. The Articles of CEDAW

Article 1: The caste system has the effect of excluding Dalit women from fundamental freedom enclosed political, economic, social, cultural, civil and other rights. Government measures to abolish the caste system have not had the desired effect of ending the discrimination which persists at all levels in different forms.

Article 2 (b), (c) & (d) - The practical realization of the principle of eliminating discrimination against Dalit women has not been realised despite provision in laws, specifically, legal protection of the rights of Dalit women against discrimination has not been ensured, as is evidenced by the fact that cases booked under the Scheduled castes/Scheduled Tribe Prevention of Atrocities Act have a conviction rate less than 1%. Often the police refuse to book cases under this Act, making the statute unavailable to those whom it is meant to benefit.

Under Article 3 of CEDAW, the government is obliged to take appropriate measures to ensure the full development, enjoyment of human rights and fundamental freedom. Clearly, as discussed above, this has not happened.

Under Article 4 the adoption of temporary special measures are advocated for advancement of women's rights. In practice Dalit women face impediments in the enjoyment of these rights and measures as a result of the prevalence of the caste system in Indian society. This has the effect of nullifying the desired effect of ensures adopted to promote equality through limiting access to and enjoyment of these measures.

Article 5 advocates the need to "modify social and cultural patterns of conduct of men and women with a view to elimination of prejudices and customary and other practices based on the idea of inferiority and superiority of either of the sense or on stereotyped roles for men and women". Clearly the effect of caste with its imagined inferiority of certain categories of women, specifically Dalit women in this case, has a



deleterious effect on the lives of the affected population. The measures adopted by government far to eliminate caste barriers and ameliorate its impact are clearly insufficient.

Article 6 refers to measures to suppress trafficking in women and exploitation of prostitution of women. However dalit women and girl children are often compelled by means of customary practices into the Devadasi system and inequitable economic policies causing lack of access to fair and just employment.

Article 7, specifically 7 (b) & (c) refers to the right of women to participate in policy formulation implementation and public office and in civil society institutions concerned with the public and political life of the country. However, the participation of dalit women at the levels of decision making is so minimal as to be practically non existent. Further, while the 73rd & 74th Constitutional amendments do give reservations to women in local government bodies, the government has not been successful in bringing intention into full practice by enabling reservations for women, including dalit women, at the level of state legislature and Parliament.

Article 8: In terms of representation of government at the international level in international organizations the participation of dalit women is virtually nil.

Article 10: In the field of education, statistics show that dalit women have not been able to access the benefits of reservations and other affirmative actions due to social and economic impediments.

Article 11: Even where educational attainment has occurred their placement whether in government or private sector has not been at the appropriate level. Often they are the victims of stereotyped attitude of colleagues and employees which limits their performance and advancement in the place of employment.

Further, due to the vast majority of dalit women being employed in the unorganized sector, they totally lack any access to social security measures such as maternity leave, protecting of employment, childcare services, and special protection during pregnancy in types of work harmful to them. The government has made very little progress in advancing the cause of women in the unorganized sector, especially where migration for employment occurs.

Article 12: Access to health care for rural women below poverty live has been adversely affected by liberalization of the economy and roll-back of health services. The consequent impact on dalit women's access to health services has been extremely adverse. Their nutritional status, access to water and sanitation and reproductive health care are very adverse to their interests especially in the context of migration and in urban slums.

Article 13: Article 13(b) refers to economic rights. The access of dalit women to economic resources are severely limited due to historical factors. There are very few special measures to ensure their right to credit especially as their economic asset bases are practically nil.

Under 13 (1) (c) their right to participate in recreational activities, sports and cultural life is severely restricted due to the heavy work burden imposed on them by traditional norms, in addition to discrimination by their peers.

Article 14 treats of the problems of rural women. Dalit women in rural areas face massive violations of their human rights including exploitation of their labour, sexual violence, domestic violence, denial of access to health and education, mobility, transport, water and sanitation. Their access to training, community leadership, agricultural credit and technical input is practically very low. Their role in decision making in relation to common property resources such as common lands and water, housing, electricity etc and adequate enjoyment of these living conditions is much lower than desired.

Article 15: In terms of equality before law there is a need to focus on enjoyment of substantive equality, as dalit women face impediments to their enjoyment of even basic entitlement and rights. The experiences of

dalit women in their encounters with the formal justice systems are extremely adverse. The numbers of dalit women under detention and as inmates of prisons are grossly out of proportion with their proportion to the population, pointing to the interplay of structural factors in this crucial area of rights.

Art 15 (2) specifically refers to the identical legal "capacity of men and women to conclude contracts.... equally in all stages in court and tribunals". In this context an enquiry into the role of women in peace building and conflict resolution will reveal that there is a glaring absence of women during peace negotiations especially in areas of civilian conflict as in several regions in India, despite the adverse differential impact on women and children in such conflicts. Dalit women in particular face extreme violence during caste conflicts including rape, destruction of house and possessions, displacement, long-term denial of access to employment, water, mobility, etc. They face the brunt of caste conflicts by having to face the violence of state actors who often work in support of the perpetuators of caste and ethnic conflicts, as the dalit men often escape from the villages to save their lives. The dalit women are them faced with the responsibility of caring for the aged and children, providing for them and dealing with their own trauma without any help or support.

Article 15 (4) speaks of the right relating to movements of persons and the freedom to choose residence and domicile. This right is denied to dalits including dalit women, as their right to reside is restricted areas predetermined by the dominant castes. The dalit women also face a lot of violations of this right due to displacement due to causes including caste conflagrations and development-induced displacement.

Article 16 deals with the rights of women relating to marriage and family relations, ensuring the equality of men and women in this area.

Article 16 (1) confers the same right to enter into marriage for men and women. However dalit women and girl children face severe social constraints in relation to marriage. These include marriage under the age of majority, denial of right to choose the spouse and enter into marriage with free and full consent. Often social opposition to the right of dalit women to choose one's spouse (in the case if inter-caste love marriages) takes the form of extreme violations such as incarceration, beatings, rape and abatement to suicide or murder. Several such cases have been widely reported in the media over several years.

The violation of rights granted under Art. 16 (2) is marked in the lives of dalit women and girl children, who are often married at an early age. Further, the pernicious devadasi system pushes minor dalit girls into a life of prostitution due to socially and religiously sanctioned practices as discussed above. Despite the legal provisions on this phenomenon, the implementation is more in the breach than in the observance.

15.2.2. The Concluding Comments of the CEDAW Committee

No.66: Enforcement of Fundamental Rights and Employment in private Sector:

In the case of employment, dalit women can only access fundamental rights in the government sector. While it is true that the Constitutional Provisions are enforceable against state actors in the event of non-implementation of fundamental rights it is by no means certain tat these enforcements actually happen. A case in point is the low rte of booking of cases under the SC/ST PA Act, and the woeful conviction rate of 1% of the cases that do get booked. Further, in the case of reservations for dalits in government jobs, statistics show that many aspirants to these posts are not selected for frivolous reasons or because they are too poor to pay bribes for the coveted government jobs, thus denying them the benefit. Another major issue is that non-dalits submit fake certificate to corner the benefits and deny the dalits their due.

In the case of employment in the private sector many hopes were raised when the incumbent government had included the issue of reservation in the private sector in the election manifesto and included it in the Common Minimum Programme of the coalition presently in power. However these hopes were belied when the government backtracked on this issue in the face of an unenthusiastic response from the captains of industry in India.



As a large number of the female workforce in the country is found in the unorganised sector, the vast majority of whom are dalits, where there are very few safeguards for workers, there has been an attempt to introduce legislation giving them the basic entitlements. However these statutes remain in the draft stage and little progress has been made to pass these pro-woman and pro-labour legislations.

Para 68:

"The high incidence of gender-based violence including the customary practices such as dowry, sati and the devadasi system"

The devadasi system in particular is almost exclusively oppressive of the dalit women and girl child. There are legislations banning the practice and programmes to rehabilitate them. However the continued impetus to the system comes from social practice, and therefore the remedies must be necessarily more that legal. The government machinery is lax in the implementation mainly due to the implicit support of the political establishment to the system. There are no govt-sponsored information, education and communication strategies applied on a wide scale to challenge the social and religious legitimacy given to the practice.

The extreme violence including rape, stripping in public and public parade faced by dalit women during caste conflict caused by the continued existence of the caste system goes almost entirely unredressed as evidenced by the poor record of the implementation of the SC/ST Prevention Act 1989. The conviction rate under this act is about 1%, including the violence faced by women.

Para 69:

Highest levels of domestic violence are faced by dalit women mainly due to the fact that their lives lie at the intersection of several fault lines in Indian society. Poverty, lack of access to any forms of basic amenities in rural and urban slums, caste and gender discrimination in the wider community and last but not least the fact that the men who perpetrate domestic violence on the women themselves experience exclusion and discrimination, poverty and indebtedness. Alcoholism among the men is a major contributing factor to the violence faced by davit women.

Para 74:

There is an abysmal record of the implementation of and successful prosecution of the SC/ST prevention of Atrocities Act as already discussed under Para 68. There has to be a special focus on the sensitisation of the justice system on the provision and scope of the PA act, and the situation of the dalits and adivasis (STs) in the country. The impact of the denial of access to livelihoods exposes dalit women to high levels of violence at the workplace, as they work at casual agricultural labour, construction work, sweatshops in export industries, and in home-based employment.

Para 75:

There has to be sustained engagement of the government and the communities that foster and promote the existence of the devadasi system. There is a need for measures to provide alternative livelihoods, special thrust to dalit girl child education and dalit women's employment, and an ongoing campaign to focus on removal of caste discrimination in Indian society at large. The role and contribution of dalit women to the economy, the social and cultural fabric and the political life of the country through their quality participation in local government bodies. There have been very little govt. initiatives in these areas.

The numbers of girl children and women being trafficked include a majority of dalit women, partly due to customary practices and traditional impediments faced by them in terms of precarious livelihoods, vulnerability to displacement and exclusion from opportunity to upward social and economic mobility. The impact of the spread of HIV/AIDS affects a disproportionately high number of dalit women and girl children due to their vulnerability to trafficking and sexual violence. However the health and HIV/AIDS policies do not take these factors into account in their policies, funding and programmes.

Para 78:

Denial of access to healthcare for dalit women is almost normative, especially at the present time due to the rollback of social services including a good and effective public health system. The inability of Dalit women to pay for medical services have had an adverse impact on their general health and quality of life, adding to their burden due to inadequate nutrition, sanitation, and almost non-existent opportunity for adequate rest and recreation. These factors have a major role in the high level of mortality and morbidity in dalit women and children.

15.3. CRITICAL AREAS OF CONCERN

In theory, dalits, including dalit women, are granted equality with men, under the Constitution of India. Personal laws relating to Hindu women (also applicable to dalits) guarantee certain rights to them. However due to their lower social status, lack of access to equitable employment, education and legal rights including the ownership of economic resources, dalit women face severe structural constraints in their development. Gender discrimination within their own communities limits their decision making and mobility and personal growth.

- The experience of dalit women of Violence is at a very high level. The most blatant form of societal violence is the forced appropriation of their sexuality by the so-called Devadasi system (Deva: God and Dasi: servant), in which girls as young as eight and nine are "married" to the idol and then can be sexually exploited by the dominant caste men in the village while she continues to live in her parental home. Most of these girls end up being trafficked to the red light areas of the cities.
- Social exclusion limits their work participation to the lowest paid, most insecure, dangerous and most stigmatized work, including that of sweepers, home-based contract work and manual scavenging.
- The 73rd and 74th Amendments to the Indian Constitution brought a hitherto unprecedented opportunity for the participation of dalit women in political governance through the proportional representations of seats in bodies of local governance including municipalities and panchayat raj institutions. However the experiences of dalit women in political participation has been mixed with most reporting cooption, intimidation or outright hostility in addition to their impediments such as illiteracy and lack of experience in political governance.
- The government has a stated policy approach of empowerment of women. The strategies for achieving these include reservation of 1/3rd of seats in bodies of governance, presently the local bodies but also planned for the legislative assemblies and Parliament. However, it must be stated that thought there are several affirmative policies and programmes for women there are gaps in the ability of the women to access information on both policy and programmes. Further, the approach to addressing women's issues appears not to take into account the profound influence that caste has on the lives of the marginalized, especially the dalit women both in rural and urban areas. Their livelihoods are severely limited to casual wage labour, contract work or home-based production, all in the unorganized sector. Dalit women make up the bulk of the workers in the unorganized sector. Ninety three percent of the workers in the country are unorganized. Many dalits including women and children are engaged in bonded labour.
- Globalization has had a profound negative impact on the lives of the women in the unorganized sector, most of whom are dalits or minorities. The Privatization of common property resources including grazing lands and water sources such as tanks and underground water sources has made access to drinking water very hard for the rural population especially dalit woman, who face severe violence when they try to access drinking water from fields and bore wells belonging to the dominant castes. This can include any or all of the following - Verbal and physical abuse, sexual harassment, forced



labour. They are deemed access to or made to wait indefinitely to collect water from wells/ bore wells in dominant caste areas due to the practice of untouchability, which continues unabated in the rural areas of the country despite legislation outlawing it.

15.4. GOVERNMENT INITIATIVES

- A women's component plan envisages ensuring that not less than 30% of funds/benefits flow to women from developmental sectors.
- Promoting the formation of Self-Help groups of women as a means of empowering them.
- Maintaining the high priority to women's and children's health and nutrition through supplementary feeding immunization and better responsive health care.
- Improving access to education through the commitment of the special Action Plan and other related initiatives, including professional and technical - vocational skill.
- Enhancing access to credit through proactive measures such as setting up a development bank for women Entrepreneurs.
- The constitutional provisional and other affirmative actions including reservations in government jobs and education and proportional reservation in local government bodies constitute the bulk of the government's response to the issues specific to Dalit women. Of these two are unique to them, one being the issue of Manual scavengers and the other the Devadasi system. The Government has passed laws banning both practices and announced several schemes for the rehabilitation of the women affected by these social practices. However the measures to prevent these practices have not kept pace with the increase in women and girl children being affected by these practices.

15.5. VIOLENCE AGAINST DALIT WOMEN: STORIES OF STRUGGLE

1. A 20-year old dalit girl in rural Sitapur is gang-raped for revenge by the upper caste Pradhan's son and his henchman when she went out to relieve herself. The clout of the boy's family that owns 400 bighas of land in and around the village has seen to it that the case is dismissed as 'false'. The girl's family is still fighting for justice.

The Pradhan of Dubwan village of Pisawan block of Sitapur district, Diwakar Dixit, has a monopoly over the village land where the poor and landless farmers work. The caretaker of his family pond, his henchman Munna, charged one Ram Prasad of stealing a fish from the pond on 15th July 2003, which Ram Prasad had vehemently denied. Later that night when Ram Prasad's daughter Kamala (name changed) went to the fields she was pounced upon by Neeraj and Munna's son Ram Singh.

The next morning the traumatized girl accompanied her father and uncle to the police station to lodge an FIR. Members of the Pradhan's family were already there. The police immediately arrested her father for allegedly stealing a fish. Kamala and her uncle were kept waiting at the police station for two days. Neither was a report lodged nor was she medically examined. When the uncle contacted the Government Hospital for a medical examination he was chased away and asked to come with the police order. Disappointed, the uncle met the Sitapur S.P. who directed the Pisawan police station to immediately lodge a report. Finally an F.I.R. was lodged five days later on 20th July 2003. Kamala was medically examined at the police station the same day. As five days had passed no medical evidence was found. Former MLA, Munuwa Pradhan, Ram Prasad Mishra and Secretary Islam Khan started putting pressure on the girl's family to maintain secrecy about the rape and agree for a settlement.

On 22nd July, three days after the F.I.R. the Station Officer (Thana-in-charge) and Sub-Inspector (Daroga) Brijesh Tiwari went to the village for investigations. Twelve people who are all close associates of the

Pradhan testified that the case was false. The case was closed as fabricated and false. The Station Officer belongs to the Pradhan's caste

The girl's uncle contacted an advocate with whose assistance a court case was lodged. On 14th August 2003 the first summons were issued. The girl's statement has been recorded under IPC 354/506.

2. While filling water at the hand-pump an upper caste family brutally beat up a 40-year old pregnant Dalit woman in Bhauri village in Chitrakoot. The police refuse to lodge an F.I.R. until a local N.G.O. puts pressure to do so. Two years later the case is yet to begin.

Sukhiya (name changed) of village Bhauri, police station Raipura, district Chitrakoot, is a hardworking farmer who owns 4 bighas of land. While filling water at the village hand pump on 13th October 2001, a minor argument snowballed into a major fight. An upper caste person from the village, Mata Badal Soni, his wife and two daughters dragged Sukhiya by her hair, rammed her head to the ground and beat her up mercilessly in full public view. She was expecting her fifth child and was six months pregnant when the incident occurred. Sukhiya started bleeding, felt intense pain in her stomach and could not feel the baby's movements or heart beat.

Immediately after the incident the women of the village Savings and Credit Group took her to the husband of the village Pradhan, Badri Tripathi. However, Mata Badal Soni refused to turn up at his summons. The Pradhan's husband asked the woman to do whatever they could. The women went to Karvi police station with the workers of a local N.G.O. - VANANGANA where they sought written permission to refer Sukhiya to the District Hospital for a medical check-up.

"later when Sukhiya, her husband and the village woman went to the local police station at Raipura to lodge a formal complaint the Sub-Inspector B.P. Pandey threw away their application, accusing them of *coming to the police station "for every small matter"*.

With the intervention of VANAGANA a report was finally lodged under Section 323 and 504. Next day accompanied by the same S.I. and a constable from Karvi, Sukhiya went to the Mau Health Centre for a check up where it was confirmed that the child had managed to survive. The local MLA paid for the ultrasound. The next day the Rajapur C.O. met Sukhiya and investigated her case following which the main accused was arrested. Two days later he was out on bail. Two years have passed but the case is yet to start. Five months after the incident the survivor has received Rs. 2500 from the Social Welfare Department towards medical and legal expenses. Sukhiya is still awaiting justice.

3. A 20-year old married Dalit woman is raped by a Brahmin youth in Chargaon village of Chitrakoot. After running from pillar to post her F.I.R. is lodged eight days later. The culprit is put behind bars for six months and released on bail. He continues to harass the girl and her in-laws and threatens to kill them. Unable to face it the survivor's husband has left her and gone to work outside. Even her natal family has cut off all links with her.

As the sun was setting on March 11, 2002, 20-year old Ragini (name changed) set off to the fields to attend nature's call. On the way Raju Upadhyay of the same village raped her in the fields. Ragini reported the matter to her in-laws with whom she lived. As they were leaving to file an F.I.R. some influential men from the village stopped them and asked them to settle the issue in the Panchayat. Except two all members of the Panchayat were Brahmin men. First the Panchayat men charged the woman with consenting to what had happened, then urged the family to mutually "settle" the issue. During the Panchayat meeting the culprit appeared twice threatening the members if they did not dismiss the case. For the next seven days the survivor and her family were pressurized not to make an issue of the rape.

Finally on 18th March a Brahmin from the village Chote Lal secretly assured Ragini of help and smuggled her



out of the village with her husband, to the police station. When Ragini asked the Sub-Inspector to lodge a complaint he advised her *not to make a mockery of her "izzat" (honour) by insisting being stubborn, and to settle for a compromise*. However Ragini, met the Karvi legislator R.K. Patel and the Superintendent of Police. After their telephonic instructions the local police station lodged her FIR.

Two days later on 20th March Dr Nidhi at the Mau P.H.C medically examined her. After another two days the culprit was arrested on 22nd March 2002. In July 2002 Rani received Rs.25, 000 from the Social Welfare Department. According to her father-in-law it is for expenses to fight the case. Six months later the culprit was released on bail and is going around scot-free threatening the survivor and her family with dire consequences.

Ragini's husband has run away to work outside the village. The natal family has broken off all links with their daughter and the father-in-law now refuses to say anything and just wants to be left alone. Meanwhile, Ragini is facing virtually house arrest and is made to feel guilty of a crime of which she is in fact, a brave survivor.

4. Within days of the Mayawati government's departure, a 20-year old Dalit woman is raped by two Yadav youths in broad daylight in Asandra village in Barabanki district, barely 80-kms from the state capital. The family has been unable to lodge an FIR till date, while the culprits are moving around freely and have also beaten up members of the survivor's family.

On the morning of 13 September 2003 Shanta (name changed) spotted two men from the village - Anand Yadav and Chandra Mohan Yadav - harvesting the *karvi* (rough grain) crop from her field. When she asked them to stop they pounced upon her and both of them raped her. Somehow Shanta managed to scream for help. Her sister-in-law who had also come out to relieve herself ran to her rescue. On seeing the other woman appear on the scene the culprits fled. According to the survivor's family, the incident was provoked by the Mayawati government's allocation of a fallow field to their family, which happened to be next to the fields of the Yadav family. This incident took place within a week after the fall of the Mayawati government.

The two women returned home and Shanta immediately went to complain to the village Pradhan with her husband and brother-in-law. The Pradhan gave them a blank sheet of paper and asked them to go to the Police Station. When the three of them reached Asandra Police Station, they were asked to wait till evening. After waiting the entire day, they were told by the police that this was a false case and had to return without getting an FIR lodged. They were also unable to get a medical examination done because they were informed that this could be only be done through the police.

The survivor's family sent letters by Speed Post to the DPM and Home Minister L.K. Advani, the Chief Minister Uttar Pradesh, the Secretary of the Women's Commission, the State Dalit Commission and the SP Barabanki district. Despite all these efforts, they were unable to even get the FIR lodged, leave alone access justice. On 20th November 2003, Muhammad Aarif of Asandra Police Station accused the survivor's family to concocting a false case: *"Is it possible to be raped in broad daylight at ten in the morning, that too in the presence of one's husband? This is an attempt to play dirty politics."* On 27th October, the accused Anand, Chandra Mohan and six others brutally beat up Shanta's sister-in-law and her husband with rods and sticks and forcibly took away the entire harvested crop from their field. When they went to complain at the police station, once again they were made to wait the entire day and their complaint was not registered. This time, the three went to the Commanding Officer in order to lodge the FIR. To date there has been no action taken against the accused.

5. In village Kirsiya of Barabanki district, a thirteen year-old Dalit girl goes with her friend to grind some wheat at the local shop. The shop owner, a Brahmin youth, forcibly pulls her into the shop and locks the door from within. Her friend runs away in fear. The youth breaks her pajama cord, at which the girl bites him and frees herself. The FIR is lodged only after intervention from the local MLA, but the accused who is the son of a police constable in Lucknow, gets away scot-free.

On the evening of September 9 or 10, 2003 (the family cannot give the exact date) thirteen-year-old Maya (her name has been changed)went with her friend to the local village shop to get some wheat ground into flour. As she was leaving, the shop-owner Guddu grabbed her and forcibly dragged her inside. Her friend ran away in fear. Guddu dragged her into the room with the grinding machine and locked the door from inside. He snapped her pajama cord, but she bit him and managed to escape.

She got home and went with her father to the village Pradhan Keshav Ram to complain. The Pradhan along with Maya and her father went at ten pm to lodge an FIR at the Subeha police station. They were forced to return empty-handed. The next morning they went to the local legislator who assured them that this case did not need a medical examination. With his help a report was lodged at the Subeha PS. According to the local schoolteacher, the report contained IPC section 354 (attempt to rape), 506 (criminal temperament) and the SC/ST Act. (Maya's father is non-literate and has handed over his copy of the FIR to the local legislator).

The police came to the village for investigations and locked up Guido's shop for a fortnight. They also recorded a statement from Maya's friend who was an eyewitness. During this period, Guddu was at Lucknow with his father the police constable. He returned after a fortnight and continued to run his shop as before. A fortnight later, the police suddenly picked up Maya's father and took him to the police station. He was detained there without any reason until the village Pradhan rescued him the next day. Maya is worried that her husband may not accept her if he gets to know of the incident. Since then her in-laws have not contacted her even once. Her family has not yet repaid the debts incurred at her wedding.

15.6. CONCLUSION

The role of dalit women in decision-making, whether in their personal lives, in the community or in society at large is almost non-existent. Hence in the context of CEDAW, they face several ideological and material barriers to full participation at all levels. As a result, they face impediments in the enjoyment of substantive equality and are therefore discriminated against. Hence, the state, including all three arms - judicial, executive and legislative - is obliged under CEDAW to ensure the full enjoyment of the husan rights, including the political, social, economic and cultural rights. It is only then that women will enjoy de facto equality rather than de jure rights which remain in the rule-books. This can be ensured by taking steps to ensure "equal out comes" as a result of "equal treatment", which will allow for sensitivity to disadvantages that may not allow people to benefit from equal treatment. Temporarily special measures, as prescribed under Act 4.1 of CEDAW, all be necessary to being about de facto equality.

As a result of the historic, past and present discrimination faced by dalit women, there is a need to put into place enabling conditions or preferential rules to benefit them, so as to facilitate their access to opportunities and accelerate de facto equality.

Endnotes

[1] See *Dalit Human Rights Monitor, 2000-2003: Andhra Pradesh*, Secunderabad: Sakshi Human Rights Watch, 2003 and Government of India. 1986-1987. *Report of the Commissioner for Scheduled Castes and Scheduled Tribes*. Twenty eighth report.



INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 16

CHAPTER 16

SITUATION OF TRIBAL WOMEN IN INDIA



SITUATION OF TRIBAL WOMEN IN INDIA

Whatever be the discrimination against women, it is always culture specific. In this context, discrimination against tribal women has to be understood in relation to tribal customs. When tribal communities face discrimination in India, the discrimination against tribal women is two fold because they are females and also tribals.

Discrimination against tribals have increased with changing land rights pattern - whereas the individual rights over land, mainly agricultural land alone is officially recognized, the age old community ownership over land and the forest rights are disregarded. The tribals are being deprived of their rights to livelihood also. The languages, dialects, cultures, faiths, social arrangements are sidelined by the established, majority, dominant groups/ religions. This experience is common among tribal communities almost all over the world. The struggles for assertion are brutally suppressed.

Government of India has been implementing many development projects in the tribal areas by constructing dams, roads and forest conservation programs. In all these projects, tribals have not been recognized as equal citizens to partner with, and take into confidence in planning, policy formulation. They were literally chased away from their own traditional land and turned into displaced, landless, migrant persons in search of a livelihood. The internally displaced persons have no support delivery system in place. The Rehabilitation and Resettlement Policy of the government is yet to be tried. In certain states the government even do not have any R&R Policy.

The tribal women suffer both by the state machineries as well as tribal customary practices. They continue to live with the various dis : criminatory practices that aim to control their mobility, sexuality, and reproductive capacity within the different cultural practices of the hundreds of tribes. There is no effort to identify the discriminatory or anti-woman practices of the 683 tribal communities in India in the name of noninterference policy, to provide succor and redressal to the suffering women.

16.1. PREVALENCE OF THE PROBLEM

Livelihoods: Because of globalization and development projects and entry of MNCs engaged in mining and industries, the displacement of Adivasi / Tribal people from their own land is on the rise. Since 1990, 55.19 % of the internally displaced are tribals. The RR Policy is state specific and at times, project specific and do not provide comprehensive package for rehabilitation. Though provision for some compensation is there, the livelihood issue is not addressed at all. This has been leading to mass migration of tribal families to unknown destinations in search of livelihoods for survival. Due to lack of literacy and skills, thousands of migrant young women become exposed to labour exploitation and trafficking.

Alcoholism: According to civil society studies, 60 % of earnings among the adivasi families are wasted on alcohol, which is also a cause of the increasing domestic violence and violations of women's human rights. The beverage policy of some states has become instrumental in increasing violence against women as well increasing pauperization of tribal community, especially tribal women, marginalizing from their natural resources and their livelihood assets.

Food Security: Threat to food security due to the commercialization of agriculture and change in pattern of cropping is palpable. And food for local consumption is not on priority agenda of government. There is also no assurance of good returns of the commercial crops. The PDS is also not effective. And owing to import of skilled labourers to work in large commercial agricultural farms in the tribal areas, the unemployment amongst tribal women is also on the increase.

Health: The lack of infrastructure in the health sector in the tribal dominated areas is still there. Whatever facilities are there are beyond the reach of the poor tribals. Traditional health practice is also eroding owing

to the depletion of forest and its degradation due to various mega projects. The practitioners of traditional healers are not appreciated for their knowledge and wisdom. The privatization of health sector has made the government delivery system slacken down further on the one hand and also made the services inaccessible and unaffordable to the poor tribals. Nutrition status is also sliding down further because of the depletion of foods from the forests.

Control over Resources:: Tribal communities and their community ownership of land is highly disturbed due to privatization of tribal land and BENAAMI transfer of tribal land with the collusion of some greedy tribals. Government's priority for development in national interest at the expense of the rights of the tfibals over their own resources is leading to a complex problem situation, whereby women in these communities are put at the crossroads to suffer in various ways.

Conflict Situation: The tribal people's political aspirations to 'self-determination' and assertion to have full control over their resources have led to the armed conflict situation in north east India, which is dominantly a tribal region. The militant uprisings among many tribes in different states of the region has seen thousands and thousands of women being molested, jailed, abducted, raped, killed, widowed, deserted, impoverished to destitution, charged for sheltering terrorists and what not. This perhaps is just an indicator of the GOI's high insensitivity to the cultural and economic tensions. The recent announcement of the Pfime Minister of India for a Review Committee of the AFSPA is a welcome step towards ameliorating the sufferings of the people

16.2. GOVERNMENT INITIATIVES

Food for Work: The govt. employment programme of FFW is not up o the International standard of nutrition. The rice provided is not consumed by the adivasis.

State Commissions of Women : Many states, especially in the tribal north eastern states have not established State Commissions of Women as yet.

The Education Policy of Government of India is not relevant to Tribals: Literacy among the tribals is very poor and among the tribal women it is worse. The present education system does not recognize the tribal context, language and culture and that has resulted in tribals being alienated from their own culture. Lack of adequate infrastructure is another problem. The government residential schools for tribal girls are so poorly maintained and the grants to those schools are so less that they do not cater to the stated objectives of tribal women's literacy.

Government Health Service: Government health service is almost out of reach for the tdbals, especially for tribal women. Non availability of medicines and introduction of user fees has further increased the morbidity among the tribal women.

Religious codes and norms & practices of cults and communities: Religious conversions and reconversions of the tfibals by the dominant / majority established religions at the expense of the faiths and beliefs of the tribals is eroding the religio-cultural base of the tribals .

Violence in the lives of the tribals: *Industrialisation* in the tribal areas is causing increased alcoholism resulting in more violence against women. The infiltration of the non-ttibals into tribal area also adding to the woos of the tribal women, loss of livelihood is compelling the tribal people, especially the tribal women to migrate and thus migration and trafficking is increasing.

Militarisation of the north east India has led to major human rights violation.

Recruitment, education system, media reinforce of sex stereotype role



16.3. CEDAW FRAMEWORK

16.3.1. Relevant Articles in CEDAW

Article no	Details
Art 2 (f)	To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women
Art 5 (a)	To identify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotype role of men and women
Art 10	State party shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal right,with men in the field of education and in particular to ensure on a basis of equality of men and women.
Art I0 (c)	Elimination of any stereotyped concept of the role of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and in particularly by the revision of textbooks and school programmes and the adoption of teaching methods
Art I0 (d)	The same opportunities to benefit from scholarships and other study grants.
Art I0 (e)	The same opportunity for access to programmes of continuing education, adult functional literacy programme particularly those aim at reducing , at the earliest possible time, any gap in education existing between men and women.
Art I0 (f)	The reduction of female students drop- out rates and the organisations of the programmes for girls and women who have left school prematurely.
Art I0 (g)	The same opportunity to participate actively in sports and physical education.

16.3.2. Implementation Status of Concluding Comments

Though there is no specific mention of the concerns of the tribal/indigenous/adivasi and hill women of India in the CEDAW Committee's concluding comments, which ought to be, an attempt is made to situate the tribal women in the various comments of the Committee.

The CEDAW committee pointed out (60) that no steps have been taken to reform the personal laws of different religious and ethnic groups, in consultation with them, so as to conform to the Convention. The committee is concerned that the Government's policy of non-intervention perpetuates sexual stereotypes, son preference and discrimination against women.

Implementation status: The proposed National Tribal Policy still aspires to continue with the non-interventionist approach. This, if allowed, would be at the cost of the basic human rights violations of women in the hundreds of tribes of India.

In (62), the Committee has also put on record that India has not yet established a comprehensive and compulsory system of registration of births and marriages. The committee is also concerned that failure to register marriages may also prejudice the inheritance rights of women.

Implementation Status: There is no compulsory registration of marriages in many states till date. And many women are still deprived of inheritance, maintenance rights.

The Committee is also concerned about the (68) high incidence of gender-based violence against women,

which takes even more extreme forms because of customary practices. Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment.

Implementation Status: The efforts of various women's organizations and civil society bodies to initiate reforms in the customary practices in different states do not get supports from the state machinery.

And in paragraph 71 the committee is concerned that women are exposed to the risk of high levels of violence, rape, sexual harassment, humiliation and torture in areas where there are armed conflict.

Implementation Status: Continued militarisation of the north east region, a dominantly tribal region, and the extension of the Armed Forces Special Powers Act in some of the states, has only ensured the sufferings of women at the hands of both the state actors and the non-state actors. The women had to resort to protest in nude in the state of Manipur to draw the attention of the state to the need for repeal of the Act.

In paragraph 72, the Committee recommends a review of the AFSPA ... and those women be given an opportunity to make their contribution to peaceful conflict resolution.

Implementation Status: During his recent visit to the northeast the Prime Minister of India has announced for the constitution of a committee to review the AFSPA. But it is not known if there is a space for representation of woman in the committee. There is also no government policy to involve the women in conflict resolution.

The CEDAW committee has urged the government to provide sex-disaggregated data on different subjects.

Recommendation: It needs to be extended to the Dalit and Tribal women data as **separate category**

16.4. RECOMMENDATIONS

1. Government should adopt the relevant standards set by the United Nation's System including ILO Conventionl6g and the UN Declaration on the rights of Indigenous people.
2. Gender Impact assessment of every development project that takes place in Tribal areas. should be ensured with a proper plan of action for addressing the interest of women.
3. To ensure the access and control of Adivasi women on natural Resources
4. The state should encourage the practice of healing system and document the knowledge practices on medicine.
5. Provision of drinking water facilities in every tribal village.
6. Provision of mobile medical service for safe delivery.
7. Land entitlement in the name of women,
8. Tribal women's access and control over natural resources should be ensured.
9. Adequate training opportunity for their leadership development and political participation.
10. Compulsory marriage registration should be ensured.
11. Migration registration and migrants' education should be ensured to combat human trafficking.
12. Tribal, indigenous people, especially women should not be evicted from their own land and natural resources.
13. Residential girls school in each panchayat with all basic facilities and ensure girls' enrollment of girl students.
14. Curriculum to be developed which is culture specific, suitable for their lifestyle and in their own language..



15. Restoration and preservation of their knowledge, culture and heritage.
16. Implementation of tribal self rule in every state.
17. The tribal women should be consulted during planning, implementation and monitoring the development project and benefit should be accrued to the tribal women.
18. Government should adopt anti-alcoholism policy, which affects the lives and livelihoods of tribal women.
19. Conflict resolution and peace promotion should be encouraged using indigenous strategy and not by Armed Forces.

INDIA
SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 17

CHAPTER 17

VIOLENCE AGAINST WOMEN ON THE BASIS OF SEXUAL ORIENTATION



VIOLENCE AGAINST WOMEN ON THE BASIS OF SEXUAL ORIENTATION

There has been a growing understanding within India's autonomous women's movement about the use of sexuality as a means to control women. Constructions of 'good' and 'bad' women have been, and continue to be, powerful tools of such control. Women's sexuality has also been an essential tool to further nationalist and religious fundamentalist violence. For example, women, in representing the honour of the community to which they belong, are made targets of the kind of large-scale sexualized violence that we have witnessed in Gujarat. Essentialized notions of the 'promiscuous' sexuality of Dalit or tribal women are further used to justify sexual exploitation in a context of ongoing oppression on the basis of caste and class.

In the context of this necessary 'use' of women's sexuality to meet the needs of gender, caste, communal and class oppression, any agency or difference demonstrated by women in the expression of their sexuality is viewed as a threat. And the facts of women's sexual agency and difference means that women's sexuality cannot be so easily used and harnessed by forces of oppression. Women attracted to women in such a context are both threats and gravely threatened.

In addressing the different forms of violence that women face as a result of their sexual orientation and expression, the CEDAW General Recommendation Number 19 is useful. It includes within "gender-based violence" all "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty." This definition of violence provides the scope to include the full range of violations faced by lesbian and bisexual women[1], from the 'everday' intangible forms to the more overt.

One of the most powerful tools deployed by patriarchy in its project of control through sexuality is that of invisibilizing and silencing. In the case of women whose sexuality falls outside of the heterosexual norm, the silence is almost deafening. The assumption that heterosexuality is the norm is at the root of the silence on same-sex desire, making it difficult for many women to even accept their sexuality themselves. In cases where there is an acknowledgment of same-sex desire by society, it is condemned as being unnatural and perverted. The consequences for a woman struggling to accept her sexuality are feelings of shame, fear and isolation, making impossible the fulfillment of her fundamental right to a life of dignity. It is thus important to recognize the often intangible nature of violence faced by women, and especially by lesbian and bisexual women because of their sexuality.

As General Recommendation 19, number 23 notes, "family violence is one of the most insidious forms of violence against women." Some of the more overt manifestations of violence against lesbian and bisexual women within the home include murder, verbal and physical abuse, in-house imprisonment and coercion. A case brought to light by a letter written by NP, a lesbian woman, to Counsel Club, the Kolkata-based organization working on issues of gay, lesbian, bisexual and transgendered people, depicts how murder, rape and mental torture are used to silence lesbian women. NP wrote of the murder of her lesbian partner Mou by her husband in the letter - " Just a month back Mou was stabbed to death by some miscreant hired by my husband. He had come to know everything. He could not cause any harm to me because of fear of public scandalÖThat fateful night that Mou was killedÖmy husband raped meÖAt the time of putting force on me for sexual intercourse, my husband depicted to me how Mou was killed."[2]

Another form of family violence against women is the pressure placed on women to marry against their wishes. The vast majority of Indian women do not have a choice with respect to whether or not, when and whom to marry (Article 16, parts a and b). The pressures faced by women in inter-caste and inter-religious relationships are particularly severe. In a society where women are often socialized into the eventuality of heterosexual marriage, most lesbian and bisexual women cannot even imagine the possibility of two women loving each other and living together. In the case of lesbian women who have no choice but to marry, the sexual relationship with their husbands is often nothing short of marital rape.

Beyond marriage as well, the absolute hostility with which women's sexual agency as well as lesbianism is looked upon make many lesbian and bisexual women aware that their sexualities and desires will not be accepted by their families. Such women often live in fear of being 'discovered' or 'found out', and the constant mental anxiety and emotional violence caused by such attitudes have several negative consequences on the women involved such as a loss of relationships, self-esteem and internal conflicts. Whatever be the nature of the violence, the commonality is that there is often no resolution to the violence. Documenting violence against lesbian women, Bina Fernandez and Gomathy N B state "It is rare for a cycle that begins in violence to end in acceptance. None of the narratives indicated this, and only three of the 39 women in the survey who experienced abusive reactions indicated that the termination of abuse was due to acceptance."[3]

The tremendous pressures of living in a society which either chooses to ignore or condemns same-sex desire, combined with the lack of choice in relation to marriage has led many young women to take their own lives. There is as yet insufficient documentation of lesbian suicides. What is clear from the information available is that a majority of the reported cases have involved young women who were facing pressure to marry from their families. The denial of the right to life to these women constitutes a national emergency that remains largely ignored and unaddressed by both State and non-State actors in the country.

Sahayatrika, a lesbian women's collective in Kerala has documented twenty-four cases of lesbian couple suicides in Kerala during the period between 1996 and 2004. Sahayatrika found that a majority of the cases of suicides were of women from marginalized communities (Dalit, Adivasi, OBC and Muslim women) and/or women working in low-income occupations, such as factory work, tailoring, or daily wage agricultural labour. This challenging the myth that it is only urban, elite, 'westernized' women who are lesbian or bisexual. [4]

The CEDAW convention invokes the principle of due diligence under which the state has the responsibility to "prevent violations of rights or to investigate and punish acts of violence" perpetuated by private, non-state actors. The violations faced by lesbian and bisexual women within the spaces of the home, the family and the community clearly fall within this ambit.

While the 'private' realm of the family is where many of the violations manifest themselves, public institutions also have their role to play in the oppression of lesbian and bisexual women. These institutions, be it the police or mental health professionals, are informed by the same levels of ignorance and bigotry afflicting the family and rest of society. As is the case with other forms of violations that women face, the public and private collude to strengthen their patriarchal control over women. Families send women to mental health professionals to be cured of their homosexuality. The treatment can include strong medication and aversion therapy, which involves the administering of electric shocks.

Families also use Section 377 of the Indian Penal Code (which criminalizes all forms of "carnal intercourse against the order of nature") to threaten daughters if they do not give up their same-sex relationships. While Section 377 is rarely used in court against women, the very presence of such a law is used as a mechanism by families to blackmail and threaten their lesbian kin. In 1989, Tarunkumar (earlier known as Tarulata, and who had performed a sex-change operation and become a man) married Lila Chavda and was taken to the Gujarat High Court by Lila's father Muljibhai Chavda, who argued that theirs was a lesbian relationship and that the marriage ought to be annulled. Muljibhai Chavda had called for criminal action under Section 377.[5] There is therefore the urgent need that consensual sex between same-sex adults needs to be de-criminalized. The very existence of such a law violates an assumption of equality.

While a petition to read down Section 377 so that it does not cover consensual adult same-sex relations is being reviewed in the Supreme Court, the Government's response to the case has been downright negative and hostile, constantly evoking the idea of the preservation of public morality as an excuse for the continuation of this law. Among State bodies, while not only the Planning Commission but also the National Commission for Women and the Law Commission have recommended that this law should be repealed, the Government itself continues to consider it worthy of retention. The very existence of section 377 therefore militates



against the State's obligation to respect, protect and fulfill human rights with regard to human dignity, freedom of association, assembly and movement, privacy, non-discrimination, equality and the prohibition against torture—all of which are integral to the realization of rights for all citizens. A large number of civil society organizations, including women's groups[6], child rights groups[7], human rights organization and groups working for the rights of lesbian, gay, bisexual and transgendered people are demanding the repeal of Section 377. These groups are challenging the claim that Section 377 is needed for redressal in cases of child sexual abuse (for which the section is also currently being used.) Separate and more effective provisions for child sexual abuse are required.

While here we have focused on violence against lesbian women, the CEDAW shadow report would need to address the range of violations faced by women on the basis of their sexual orientation, including unequal access to health care and harassment relating to employment and housing.

Addressing the full range of violations faced by women on the basis of sexual orientation would be essential as part of a process of righting a historical wrong - that of turning a blind eye to the violations of an entire section of women. The first step of many that the State needs to undertake to protect and defend the rights of lesbian and bisexual women, is the repeal of Section 377 along with the enactment of a law to deal specifically with child sexual abuse.

Endnotes

[1] We use the term 'lesbian' here for convenience, to refer to women who desire or have sexual relationships with other women. Women who desire women have a range of expressions to refer to their desires/ relationships, while some do not label them at all. The consequences of same-sex desire, however, are similar for identifying and non-identifying women.

[2] Bina Fernandez (Ed.), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India, Revised Edition*, India Centre for Human Rights and Law, Mumbai, 2002

[3] Bina Fernandez and Gomathy N B, 'Voicing The Invisible: Violence Faced By Lesbian Women in India' in Arvind Narrain and Gautam Bhan, *Because I Have A Voice: Queer Politics in India*, Yoda Press, New Delhi, 2005

[4] Deepa V N, 'Queering Kerala: Reflections on Sahayatrika' in Arvind Narrain and Gautam Bhan, *Because I Have A Voice: Queer Politics in India*, Yoda Press, New Delhi, 2005

[5] Bina Fernandez (Ed.), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India, Revised Edition*, India Centre for Human Rights and Law, Mumbai, 2002

[6] Other than the efforts made by groups that have come together to raise issues relating to same-sex desire, it is the autonomous women's movement that has supported many efforts to break the silence around lesbian sexuality. This recognition has manifested itself in numerous ways - be it the increasing space given to issues relating to women's sexuality in the national conferences of women's movements in India, the stand taken by autonomous women's groups in Delhi against the exclusion of lesbian women's groups in March 8th celebrations or the resolutions passed at the Indian Association of Women's Studies conferences in which there is a clear articulation of a recognition that "bodily integrity and self-determination are crucial to every woman's ability to lead a life of dignity" and a commitment to "work towards the sexual rights of all women, including lesbian, bisexual, transgendered women, and other women who love women." The resolutions have also called a repeal of section 377 of the Indian Penal Code.

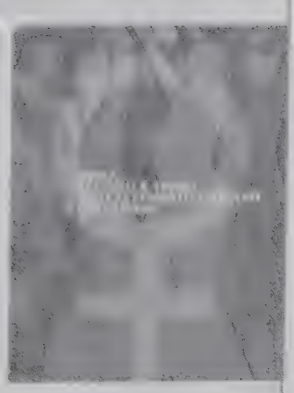
[7] At present Section 377 is often used in cases of child sexual abuse. The call for the deletion of section 377 has been necessarily part of the demand for larger changes in the rape law and a separate, more effective law to deal with child sexual abuse that would be in the interest of women and children.

INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 18

CHAPTER 18

WOMEN IN URBAN SETTLEMENTS



WOMEN IN URBAN SETTLEMENTS

18.1. PREVALENCE OF THE PROBLEM

Urban poverty and urban poor require attention especially in the context of growing urbanisation and the industrialization process.[1] In India, urban poverty is defined in terms of minimum calories intake, at 2100 calories per capita per day. On the basis of this intake, in 1991-92 the poverty line for India was Rs.11, 850 per household per annum.[2] The Planning Commission indicates that the urban poor were estimated to be 7.5 crores, comprising 38 per cent of the total urban population in 1988. This number rose to 7.63 crores in 1993-94 i.e. 32 per cent of the total urban population. The Census of India, the United Nations, and the Government of India has studied the urban population in India over time. The results show that India's urban population is increasing faster than rural population.

India's urban population according to the Census of India 2001, the urban population is over 28.5 crores, nearly 28 per cent of the country's total population. The urban population has grown 31.3 per cent over the decade from 1991-2001. It is estimated that India is projected to have almost half of its population in urban areas in 2030. This means that one of every eight urbanities in the world will be living in India. In the same year 61 per cent of the world's population is expected to be living in urban areas.

Data in India shows that industrialisation has created jobs for migrant unskilled rural labour and therefore people move to the industrialising urban areas. Urban population and industrial production do maintain a direct relationship in the pattern of growth. Higher urban growth may lead to increase wealth to share among a states total population that, however, does not ensure distribution of wealth to the poor, who support industrialisation.

Over 50 per cent of the urban population comprises the urban poor including slum dwellers, site less and house less, unorganised labour and other vulnerable sections living and working in the cities and towns in India.

A common perception about the urban poor is that they live in slums. There are other urban poor, such as pavement dwellers, street children and destitute. India's urban population living in slums varies. According to the National Buildings Organisation, (NBO), New Delhi, 18.75 per cent of India's urban population was living in slums in 1981. The actual number involved was about 300 lakhs out of a total urban population of nearly 16 crores (including Assam). The slum population in urban India alone out number the total population of all but 25 countries in the world. The number of urban slum dwellers to be over 360 lakhs.

Slums have been defined in various ways by different agencies. These definitions also throw light on the agencies approach to the issue of urban poverty. The Slum Areas (Improvement, Clearance and Redevelopment) Act 1971, defines a slum as "any area (which) is or may be a source of danger to the health or safety or convenience of the public of the area or its neighbourhood by means of the area having inadequate basic amenities or being unsanitary, squalid, overcrowded or otherwise; or the buildings in any area, used or intended to be used for human habitation (which) are in any respect unfit for human habitation".

There are three types of slums in terms of legal status: authorised, semi- authorised and unauthorised. Authorised slums are those under the purview of local bodies which are obliged to provide the slum with basic services. Unauthorised slums are those not recognised by local bodies, which therefore are not required to provide basic services to the slum. Semi-authorised slums are those in which some of the dwellings are constructed on authorised and others on unauthorised land.

The slums are the direct product of continuing alienation of land from the rural masses and their impoverishment. They are forced by the socio-economic and political system to live and struggle against constant inhuman deprivation in security, ill health and misery, their human right to economic productivity and cultural creativity are being denied from generation to generation.

The urban cities have grown in very large and undue proportions over the past 20 years, but the infrastructural facilities have not grown simultaneously they are totally insufficient for the growing population who swell the slums due to rampant poverty and as a consequence people struggle to eke out their livelihood. The poor women in slums in particular are denied the basic human right for survival and experience feminisation of poverty.

Even after 57 years of Independence, the poor and the marginalised particularly the women and children have not achieved much and are toiling against heavy odds for basic health, nutrition, drinking water, toilets, roads, street lights. Sanitation land, housing, regular employment, social security and labour welfare to eke out their living. Forty per cent of urban households live in just one room, in Calcutta that proportion rises to 70 per cent and in Mumbai 82 per cent, 75 per cent of these one room houses do not have windows, 27 per cent of the urban population in India does not have access to drinking water, 40 per cent of slums do not have access to a water tap, 80 per cent of slums have no private latrines, of these 66 per cent remain water logged during the monsoon, 72 per cent do not have access to sanitation, less than 30 per cent have community toilets for either women are men.

The primary needs of women of poor families are food, survival and welfare of their children including education and health care. Women from poor backgrounds are employed in the unorganised sector and they get wages, which are too low to maintain the family, especially given the rise in prices of all essential commodities, pushing them into a cycle of poverty and indebtedness. The existing programmes for economic welfare of women are grossly inadequate. Under these circumstances, poverty is economic violence on women.

Women's health needs are inadequately addressed by the present health care system in the country coupled with the structural poverty, low nutrients, unequal access to food, water and sanitary facilities. Women's working environment often adversely affects their health, due to forced family planning and use of oral contraceptive methods leading to breast and uterus cancer. Lack of access to primary health care and the price rise of medicine poor women are neglecting their health. A comprehensive health care system should take into account the context of women's lives and work. Nearly 3,00,000 urban children die annually due to diarrhoeal dehydration; at least 6,000 urban children become blind every year due to vitamin A deficiency; 29 per cent of infant death and 22 per cent of child death in urban areas occur without recourse to any professional medical attention; less than half of the slums have medical care.

In slums many children do not go to school especially girl children because of high expenditure to buy books, uniforms and school fees. The girl children are instead put to work as domestic workers, vegetable vendors, cracker industries, agarbathi workers and beedi rollers under extremely exploitative conditions, in order to get additional income for the families.

Poor women in slums experience enormous and unacceptable levels of violence in their daily lives in the family, community, work place and public place. The violence such as wife beating, battering, deserting, police harassment, dowry harassment, dowry deaths, suicides. The phenomenon of addiction to arrack [locally brewed liquor] is taking serious toll of families in urban slums. Women's wages are spent by their men on consuming alcohol causing tremendous stress and making women vulnerable to domestic violence. The government gives licenses for cheap liquor shops in and around slums because the industry generates enormous incomes through consumption by the poor.

The beginning of poverty eradication is the all round empowerment of the urban poor, especially poor woman at community level. The physical, financial and cultural supports of the central and state governments, local administration bodies, other developed agencies earmarked for poverty eradication should be made available to poor women at community level for their empowerment and self help. The economic empowerment of poor women is a precondition of effective poverty eradication.



There are hundreds of schemes and programmes in our country to alleviate poverty but the urban poverty is increasing. Since Independence various governments in this country at the centre and state level have made promises of better distribution of assets through land reforms, full employment, adequate health care facilities, education for all children with abolition of child labour. And yet, poor women continue to remain vulnerable and the poor are becoming poorer. What is the fate of the poor in future?

18.2. GOVERNMENT INITIATIVES

1. The subsidised Industrial Housing Scheme.
2. Low income group housing scheme.
3. The slum area (Improvement and Clearance) programme.
4. Land acquisition and development scheme.
5. The urban 20 point programme.
6. Nehru Rozgar Yojana Scheme for employment through housing and shelter up gradation.
7. Prime Minister's integrated urban poverty eradication programme.
8. National slum development programme.
9. Valmiki Ambedkar Malin Basti Awas Yojana.
10. International year of Shelter for the Homeless.
11. The Urban Community Development Programme.
12. The Environmental Improvement of Urban Slums Programme.
13. A large number of programmes consolidated into comprehensive programme called the minimum needs programme.
14. Urban basic services for the poor.
15. Special training and employment programme.
16. The self employment programme for the urban poor.
17. Urban micro enterprise scheme, scheme of wage employment.
18. Swarna Jayanthi Shahari Rozgar Yojana.
19. Accelerated urban water supply programme.

18.3. RECOMMENDATIONS

- Increase quota and quality of grain, edible oil and cooking fuel in public distribution system at price affordable by the poor women
- Provide ration cards to all urban poor families.
- Recognise women headed household for provision of ration cards to single, widowed and divorce women.
- Form committees to monitor the food distribution system and include women in the committees.
- Provide adequate supply of drinking water to every family in slums regularly prioritise water for domestic use.
- Provide for women's control over water resources in urban areas.
- Provide individual and community toilets for women in the slums
- Stop privatisation of water and electricity in the state.

- Provide underground drainage and sanitation in all the slums as an essential health measure.
- Provide land, housing, joint pattas and ownership rights to landless poor women, especially single women, deserted, widowed, disabled and battered women and to victims of communal and ethnic violence.
- Put in place an effective and efficient public health system and revamp government health facilities at all levels.
- Increase investment on primary health care and provide free medicine including costly drugs in all government hospital.
- Stop providing oral contraceptives in all hospitals which cause uterine and breast cancers.
- Provide health facilities related to mental health, especially since women are victim-survivors of violence at multiple levels.
- Ensure that a fair minimum wage and equal wages for women's labour must be implemented.
- Employment guarantee schemes must be implemented with gender sensitivity.
- Implementation of all existing legislations pertaining to women workers. protection against violence.
- Setting up of tripartite boards to ensure regulation of employment and implementation of social security and welfare measures.
- Allocate finances for setting up crisis centres for women.
- Each police station should have a special cell to monitor atrocities against women with a lady police, and social worker.
- Strict action must be taken on the crime of street harassment.
- Provide representation of women in all decision-making bodies.
- Provide budgetary allocation of funds for poor women's development.
- Government must provide vocational training to the drop out and adolescent girls.

References:

1. Women's Voice, KKNSS Memorandum.
2. Urban poverty alleviation in India Volume No.1, Ramanathan Foundation 2002.

Endnotes

[1] The current definition of urban includes the criterion of a density of population of at least 400 persons per square kilometer. All places with an administrative set up like a municipality, corporation, cantonment board or a notified town area committee are called statutory towns and others are known as Census town or non-municipal towns. An urban agglomeration was defined in 1971, as a town together with continuous outgrowth of habitations, even though these fall outside the towns statutory limits.

[2] In 1993, the Lakdawala Expert group on estimation of proportion and number of poor, recommended creating state specific poverty lines. This was to be based on a simple average of the weighted commodity indexes of Consumer Price Index for Industrial workers and consumer price index for urban non-manual employees. The modified expert group of the planning commission altered these recommendations in 1997 by using only the consumer price index for Industrial workers.



PART III : GENERAL RECOMMENDATION 19

INDIA SECOND & THIRD NGO ALTERNATIVE REPORT ON CEDAW

CHAPTER 19

CHAPTER 19

GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN



GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN

19.1. PREVALENCE OF THE PROBLEM

Pluralism and diversity are the cornerstone of Indian democracy, and perhaps the most celebrated aspects of Indian society in public discourse. The report of the Government of India refers to constitutional safeguards and legislative reforms that are being initiated to whittle down if not eliminate the discriminatory aspects of women's legal status in the country. On the ground however, there are grave problems that persist and require urgent attention. While we have the Domestic Violence (Prevention) Act 2005 and the inclusion of all Hindu women in the co-parcenary following the nationwide research and review initiative by the National Commission for Women, the problem of sexual assault on women continues to pose major problems for human rights advocacy. The crisis to democracy is precipitated by the rise in honour crimes, community based justice systems wielding violent patriarchal authority in direct conflict with the constitutional mandate. The gravest, by far, challenge to human rights and democracy has been the violence in Gujarat and the abdication of due diligence by the state in preventing or controlling the violence which for women took the form of sexual assault of the worst kind since Partition. The situation in the North Eastern states, especially Manipur, and the violence against women and human rights defenders by the armed forces only compounds the human rights crisis presented by the two decadal conflict between the state and militant resistance groups. Despite assertions by the Government that there are checks and safeguards against the misuse of the Armed Forces Special Powers Act, the sexual assault and killing of Manorama in Manipur in 2004 and the constant demand by the people of the North Eastern States to remove the Act from those states - especially the six year fast unto death undertaken by Irom Sharmila Chanu – are evidence of the grave consequences of army presence in that region in India. The practices of everyday violence against women rarely enter the public account of human rights and democracy. This report will detail some of the major ways in which the violent discrimination women face continues unabated.

The critical issues and problems women face have to do with violence [along several dimensions than span several clauses in CEDAW as well as increase the scope of the General Recommendation 19], trafficking, disability, health, discrimination and violence against dalit women, representation - political and judicial, the violation of free speech norms and the derogatory representation of women in the popular media, discrimination against minority women, inequality in educational opportunities, the curtailment of the right to life through the widespread practice of s, domestic violence, honour crimes, witch huntingÖThe account is without limit.

As observed by the United Nations Special Rapporteur on Violence against Women, "Constitutional and legislative provisions that have been enacted to protect women from discrimination have not proved to be an effective deterrent. There remains a high incidence of gender-based violence against women, which takes even more extreme forms because of customary practices (e.g. dowry, *sati*, *devadasi*); extreme forms of physical and sexual violence and harassment against women who belong to particular castes or ethnic or religious groups; Öthe continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.*"[1]

19.1.1. Violence against Dalit and Adivasi Women[2]

> On October 22, 2005, Prabhawati, a Dalit woman in Mirzapur, U.P., was admitted to a local hospital with 90 per cent burns. The previous Thursday, the day of the panchayat vote, she had been dragged out of her house by men of her own caste who wanted her to withdraw her candidacy. Her assailants poured kerosene on her and lit a bonfire to mock the "empowerment" of low-caste women. Although Prabhawati's husband filed an FIR with the police station immediately, not a single arrest had been made even three days later. (*Sunday Times of India*, 23.10.05)

Violence is central to any discussion of caste. The violence of caste is an instrument of power and may be deployed for one of several reasons. First through practices of untouchability, seclusion and social death [which in some instances can also mean the end of life] there is a direct, unquestioned and absolute exercise of power. Second through practices of aggravated assault there is an enforcement of an order that is being resisted in fundamental ways on an unprecedented scale. Third, sexual violence against dalit women is used as retribution against dalit men.

The twenty-eighth report of the Commissioner for Scheduled Castes and Scheduled Tribes records that between the years 1981 and 1986, there was a steady rise in the murder of scheduled caste and scheduled tribe persons and also an increase in the incidence of rape of scheduled caste women.

The Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes has recently noted

> "women belonging to these [scheduled] castes and [scheduled] tribes bore a double burden. They were exploited by caste and gender, and were vulnerable to and powerless against sexual exploitation."[3]

Similarly, the National Commission for Scheduled Castes and Scheduled Tribes has stated that while the annual average of reported crimes against Dalit communities has stayed at 25,000 per year, there is a substantial increase in the 'heinous crimes of rape and murder' committed on the members of the scheduled castes.[4] The same Commission has also noted

> "it is of great concern and regret that in our society, its weakest and vulnerable segments continue to suffer from discrimination, exploitation and atrocities. Despite provisions for removal of disabilities and discrimination against SCs [scheduled castes] and STs [scheduled tribes] provided in the Constitution of India, incidents of atrocities on members of SCs and STs continue to be reported from all parts of the country in differing numbers."[5]

At the end of the United Nations Decade for the World's Indigenous Peoples (1995-2004), the approximately 67 million adivasi people who live in the country, suffer violence in its various *avatars* [incarnations] – dispossession through an alienation and exclusion from forests and land, neocolonization, displacement, assimilation and state repression - has assumed genocidal proportions over the past five decades.

A recent study has delineated five aspects of gender-based violence against Adivasi women in India - physical assault, sexual exploitation, sexual harassment, forced sterilization and abuse of the girl child. Of the eight categories of perpetrators of physical and sexual assault in Tamil Nadu, it was found that forest officials ranked second. In cases where perpetrators were non-tribals, estate managers, private security on estates, etc., the fact of police complicity through non-registration of cases was very high. Over 300 women in over a quarter of the villages spread across seven districts in TN were forcibly sterilized (Irudayam and Mangubhai 2003). Apart from the systematic deployment of violence, adivasi women in "disturbed" areas are the target of state repression and often taken into custody in the absence of the husband and or for interrogation to police stations in brazen violation of procedural prescriptions.[6]

Discrimination in accessing employment, unequal pay for equal work not just between men and women but between non tribal and adivasi women, the absence of anything like maternity benefits [which even in the formal sector are only grudgingly acknowledged] dismal figures for female education in adivasi areas are practices of violence that are rooted in the structural discrimination against adivasi people, women in this instance as well being in far more vulnerable positions. The violence of the state and non adivasi communities on the one side and the retreat into "customary" community based mechanisms of "justice" on the other locks adivasi women into situations of extreme vulnerability and destitution - epitomized by Mathura and Maki Bui.[7]

The findings of a recent study on atrocities against Adivasis[8] in 100 Adivasi villages across Tamil Nadu exploring a wide range of human rights violations that had occurred in the villages over a period of ten years



from 1990 to 2000 since the enactment of the *Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989* brought to light certain instances wherein Adivasis have evolved their own protection mechanisms when faced with violence relating to safeguarding their land from illegal occupation by non-Adivasis, accessing work opportunities, potable water, education and transport facilities, and defending their women's sexual integrity.

Given the prevalence of sexual exploitation of Adivasi women in all the ten districts/areas covered by the study, and the often indifferent attitudes of the law and order machinery to registering crimes committed against Adivasis, the Irulars of K.Morur village in Salem district and several villages in Kodaikanal taluk of Dindigul district reported having adopted their own security measures to ensure the safety of their women. For example, K.Morur Irular men stayed with the women as much as possible whether at work or by their village. In a similar manner, in Kodaikanal taluk the youth club members in Pulathur village stayed close by and kept watch over young Adivasi women when the women were working in the fields. As a result, estate or farm managers and supervisors were much more hesitant and cautious about exploiting the women. In Vellarikarai village, the women took a collective decision to stop working in the estates and instead chose to find employment in the farms, because sexual exploitation was found to be much more common in the estates than in the farms. And for one to two years in Bharathi Anna Nagar, all the women slept in the same hut surrounded by Adivasi men in order to ward off any attacks from non-Adivasi men.

19.1.2. Sexual Harassment at the Workplace

A survey conducted by Sanhita, a Kolkata based women's group on sexual harassment at the workplace revealed that a large number of women faced some form of sexual harassment at the workplace, while an even larger number work under the threat or perpetual fear of being sexually harassed. A feminist initiative, the Vishaka judgement of the Supreme Court of India provides guidelines for sexual harassment at the workplace making employers and institutions responsible for implementing both preventive and remedial measures. For the first time in judicial history, the court recognizes sexual harassment in the workplace as a recurring phenomenon.

The guidelines on the issue of sexual harassment were framed in response to assaults on the bodily integrity of a dalit woman, Bhanwari Devi, by dominant castes while she was carrying out her duties as part of a government programme. The purpose of the writ petition was to seek "the enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon."

In the seven years that followed the Vishaka decision, women's rights groups across the country have lobbied with government and private employers to implement the guidelines, constitute complaints committees and create an atmosphere that is conducive for women to work unhindered, ie to eliminate hostile work environments, but also to create an atmosphere where it is possible for women who face harassment to seek effective remedy. While the constitution of the committees and the procedures continue to be fraught with problems, there is no doubt a radical change in the content of public discourse, where people in workplaces are forced to commit themselves to dealing effectively with sexual harassment, even if in practice the gains are few.

The problem remains with respect to women in the unorganized sector, women workers in the free trade zones to cite a specific example. In sectors that completely lack transparency and procedure in recruitment, conditions of employment and remuneration, the vulnerability of women workers is compounded by their situation as women, gender discrimination slipping easily and often into sexual harassment, any resistance or confrontation leading immediately to loss of employment in an already precarious survival scenario.

The condition of women workers in export processing zones demonstrates the close interconnections between denial of fair conditions of work and wages, dehumanizing work environments and routinely high levels of

sexual harassment at the workplace with no checks in place on the employer and no possible conditions for solidarity among women workers. So even while the Vishaka judgement represents a landmark feminist intervention, its impact is yet to seep into the wide net that women's employment is in the country, the gains being concentrated in a few pockets and largely restricted to cases that come to court, especially those that deal with women in the formal sector or white collar employment.

19.1.3. Violence against Women with Disabilities

A study in Orissa found that nearly 20% of women with disabilities face sexual harassment and abuse from their own family members, of which 25% are intellectually disabled. They are locked in the house, they are denied even the most bare minimum of their needs, they are tried to be disposed of as quickly as possible, so are married off to a person already married or just given away. In this situation it becomes that much more important to ensure that this difference and discrimination is reduced as much as possible so that other forms of discrimination can be addressed with much more telling effect. Sexual harassment at the workplace is also a major issue.

Differently abled women continue to suffer violence in families and communities with little recourse to redress. The fact of disability compounds their experience of disadvantage. As Andalamma, a seventy year old physically challenged woman said at a public hearing in Hyderabad in March 2004, she spent her entire life like a kite, flying where the string led her in the direction of the wind, with no space to express her will or desires.

Forced Marriage is a major problem that women with disabilities face in India, especially in rural areas.

If the denial of individual volition is violence, it gets expressed in myriad ways, each more horrific than the other, with states and often families as well participating in and justifying the denial of active choice in decision making.

19.1.4. Sex Determination and Sex Selective Abortion

The sex ratio is a good indicator of gender equity in societies at any given point of time. In general sex ratios are an outcome of four different factors: differentials in mortality; sex selective migration; sex ratio at birth and sex differential in population enumeration. The 2001 census shows an increase in the sex ratio, however, the reason for alarm was the sharp decline by 18 points in the child sex ratio in the age group of 0-6 years. This decline is so widespread that out of 28 states and union territories, only 4 states - Kerala, Tripura, Mizoram and Sikkim and one union territory, Lakshadweep, point to an increase. Logically this means that these are the only areas in the country that are free from the socially degenerative practice of eliminating girl children. The states and union territories that have shown a sharp decline in sex ratio are Punjab (-82), Haryana (-59), Himachal Pradesh (-54), Gujarat (-50), Chandigarh (-54), and Delhi (-50), although these are states that display high indices of economic development. There are 122 districts spread out over 14 states having a Child Sex Ratio of less than 900.[9]

Child Sex Ratio in the Bottom Ten Districts called DEMARU districts
[Daughter Eliminating, Male Aspiring, Rage for Ultrasound]

District	Child Sex Ratio (2001)	District	Child Sex Ratio (2001)
Fathegarh Sahib (Punjab)	754	Bhatinda (Punjab)	779
Patiala (Punjab)	770	Mansa (Punjab)	779
Kurukshetra (Haryana)	770	Amritsar (Punjab	783
Gurdaspur (Punjab)	775	Sonipat (Haryana)	783
Kapurthala (Punjab)	775	Ambala (Haryana)	784



There are clear correlations between the proliferation of sex determination tests, increase in sex selective abortions and decline in sex ratio with urban areas showing sharper drop in the sex ratio than rural areas. And not only do the numbers increase each year, but techniques for eliminating the birth of girl children proliferate. The most recent method of exterminating girls that is on offer is sex selective conception.

The Rome Statute of the International Criminal Court, in Article 7 defines "Crimes against Humanity" as "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) *Murder*; (b) *Extermination*; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*; (h) *Persecution against any identifiable group or collectivity on* political, racial, national, ethnic, cultural, religious, *gender*, or other grounds that are universally recognized as impermissible under international law; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*. "Extermination" according to the Rome Statute includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population. "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law *by reason of the identity of the group or collectivity*. Extermination through systematic murder of newborn female infants and through abortion of female fetuses [under clause (g) above] is part of the persecution of women as a class [clause (h) above]. In accordance with the Statute then, sex selective abortion meets the definition of a Crime against Humanity strictly construed and not by analogy.

Article 25 of the Rome Statute addresses the crucial question of individual criminal responsibility. Clause (3) states that "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purposeÖ(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions."

Families that seek "sex selective abortion services," but more importantly doctors and medical practitioners [and all categories of employees in establishments with ultrasound or other diagnostic or fertility treatment facilities] who use the facilities to either commit or aid in the commission of sex selective abortion, or, "sex selective abortion Service Providers" will be liable for punishment for perpetrating crimes against humanity under the provisions of the Rome Statute in far more serious ways than contemplated by the current legislation, which imposes extremely mild punishment for the first offence and then steps it up gradually, the penalty structure itself defeating the purpose. The conspiracy of silence and non-reporting, especially by the medical fraternity, even when definite information of the commission of this offence is available is yet another dimension that must be addressed as also the collective responsibility of professional bodies like the Indian Medical Association for derogatory practices by members on a mass scale targeting an entire class of persons, practices that use the professional training and qualifications that qualify them for membership in these bodies. Clearly therefore the question of criminal responsibility and liability must be structured on the basis of an understanding of the gravity of the offence - not as a response to a "social evil".

19.1.5. Domestic Violence

Domestic violence, is a critical issue across class, caste and community, that women constantly seek redress and remedy for, but rarely find. In the event of an irretrievable breakdown in marriage, or in the event of the use of extreme cruelty - ranging from physical abuse to the point of death to the eviction of women from their matrimonial homes and their consequent destitution – we do not have in place minimal operational safeguards and entitlements that ensure the woman's right to dignity within courts. Courts merely reiterate, for the most part, and reinforce the biased rhetorical devices of the patriarchal society in which they are located.

The number of women dying in matrimonial homes remains alarmingly high - women being poisoned, burnt, battered, drowned, shot, hanged and strangled within the safe and harmonious confines of the family.[10] Further, most of the violence women are subjected to within matrimonial homes is premeditated and intentional, mens rea is not read into murders of wives in the same way as it is read into murder per se. The family relationship is always the mitigating factor in sentencing policy, although the family relationship in fact renders these women more vulnerable to assault.

Marital Rape continues to be an exception to the definition of rape in the Indian Penal Code.

The issue of domestic violence then has been a complex and troubling issue for women and girl children, with practices ranging from female feticide to the commerce of dowry and the range of abuses that surround it to widow immolation and desertion making the family an extremely unsafe place for women. While international instruments like CEDAW have been brought into Indian legal regimes, the framework of CEDAW is yet to create any impact on the judicial perception of women's rights in relationship on a day-to-day level.

19.1.6. Violence and Sexual Orientation

> NP, a lesbian woman, wrote to Counsel Club, the Kolkata-based organization working on issues of gay, lesbian, bisexual and transgendered people, of the murder of her lesbian partner Mou by her husband in the letter - "Just a month back Mou was stabbed to death by some miscreant hired by my husband. He had come to know everything. He could not cause any harm to me because of fear of public scandal ...That fateful night that Mou was killedÖmy husband raped me ...At the time of putting force on me for sexual intercourse, my husband depicted to me how Mou was killed."[11]

The assumption in dominant discourse on women's rights in India is that rights in relationship inhere only in heterosocial relationships that derive from heterosexual kinship. Courts as well as civil society initiatives work within the normative frameworks of heterosexual marriage and parenting so that any articulation of rights exists only within that context. Outside of the family, in the public realm of the state so to speak, violence against women and protections against violence are read again read primarily within the domains of heterosexuality. The question of diversity with respect to sexual orientation and the rights of GLBT communities to rights in relationship, freedom of association, and the right against criminal prosecution on grounds of sexual orientation are only now beginning to be addressed by dominant discourses, and that only reluctantly. Practices of social exclusion must be mapped in such a way that forced invisibility from public arenas - discursive and social - and active discrimination bring groups within the definition of social exclusion. Lesbian women are targets of violent social exclusion with no protections in the law against **targeted assault**.[12]

19.1.7. Violence against Women of Minority Communities

What happened in Gujarat in February – March 2002 is part of our collective memory. What is most sharply etched in our collective memory is not just the complete suspension of the law in Gujarat, but the participation of the ordinary citizen - man and woman - in the holocaust and the "institutionalization of a rape culture" to spread terror among Muslim people not just in the state but in the country. One report after another that followed the genocide of Muslims in 2002 spoke of both the complicity of Hindu women in the violence and the



targeting of Muslim women in conflagrations of sexual violence. The accounts of the magnitude sexual violence and assault put that violence way beyond the scope of "rape" in the Indian Penal Code. Gujarat alone ruptures the assumption of the commonality of interests and identity of women as women.

19.1. 8. Armed Conflict and Women's Vulnerability to Violence

> On July 11, 2004, at 3: 30 pm, Havildar Suresh Kumar in Imphal (Manipur) signed a memo stating that he was arresting Thangjam Manorama Devi, 32 years old, "a suspected insurgent, explosives expert and hardcore member" of the banned People's Liberation Army (PLA). Three hours later she was found dead, having been raped and shot in her vagina. On July 15, four days after Manorama was killed, the entire country was stunned to see photographs in the national press of a most extraordinary protest—15 middle-aged women demonstrated naked in front of the gates of Kangla Fort, HQ of the 17 Assam Rifles shouting, "Indian Army, Rape Us!" Said 75-year-old Thockchom Ramani, secretary of the Women's Social Reformation and Development Samaj, "Our anger made us shed us our inhibitions that day. If necessary, we will die-commit self-immolation to save our innocent sons and daughters."

The past five decades after independence have also seen the escalation of armed conflict and militant struggles in different parts of the country, with very specific consequences for women. In terms of the issues that then get articulated as "women's issues" larger civil and political rights, it would appear take precedence over familial rights or rights in relationship, with the escalation in conflict often signaling within communities a rise in conservatism as an assertion of identity.

19.1.9. Witch Hunting[13]

Witch-hunting – one of the least talked-about acts of violence in India - is found in some form or the other in different parts of the country with concentration in the areas (states/UTs) of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharastra, Orissa, Rajasthan and West Bengal.

It is not superstition - as is commonly believed – that is at the root of many of these accusations of witchcraft but socio-economic factors- land grabbing, sexually motivated assault, chronic ill health and high mortality. In the interiors of states like Bihar and West Bengal, 'witches' or *'dains'* and their children are still hunted and killed.

> Each year, an estimated 200 women are killed as witches in rural India *(Source: Sunday Star Times, 19th October 2003)*. According to the National Crime Record Bureau during the year 2000-2001 there were 253 cases of Witch-hunting (126 cases in 2000 and 127 in the year 2001). They are hacked, hung or burnt to death. Their families don't escape either; heads of children are smashed on rocks, husbands are beaten to death.

Some women escape death but are subjected to different forms of inhuman treatment like- their breasts being chopped off, forced to eat human excreta, or banished from their homes. Sometimes it is because property is passed on to a woman, and the only way for a male relative to get his hands on it is to get her out of the way. Sometimes it is because the woman has rejected a man's advances. Sometimes it is for political reasons. In recent years there have been efforts to change the attitudes that allow this to continue, but due to ignorance, illiteracy and inflexible tradition there has been little progress.

> In a notorious case, across the border in Bihar state in 2000, Manikul Gopai survived only because her family fought to the death to defend her after she was named as a witch by a medicine man and 10 men attacked her house. Her husband was hacked to death by the attackers as he tried to guard the door. Her son's arm was sliced open, but he managed to escape and get to the police to beg for help with his dying breath. They arrived armed to the teeth and just in time to rescue Ms Gopai. She had been seriously wounded with a sword- blow to the forehead.
>
> *(Source: Independent, 5th July 2004).*

The practice of Witch naming, hounding and punishing covers under its purview the acts of stripping and parading the victim, tonsuring, blackening the face, slashing the victim with knives or any other sharp instrument, beating, burning, burying alive. Those declared 'witches' are usually women, although according to one estimate in Bihar in thirty per cent of the cases, men were the victims.[14] There may be similar figures for other states also. Incidents of Witch-hunting are occurring with alarming frequency in many regions although it is very difficult to make reliable estimates as cases of witch killing are not registered under a separate category. However available figures as well as collations of press reports do indicate an increase-

- Five such cases reported in Bihar within the month of September 2001,
- 167 such murders reported during the years 2000 and 2001 in Andhra Pradesh,
- Over 50 in the year 2000 in Assam, to cite few examples.[15]

> In a gruesome incident, a woman in a Bihar village was on Wednesday branded a witch and burnt alive. Police said residents of a village in Khagaria district first publicly flogged Renu Devi for allegedly practicing witchcraft and then burnt her to death. The police lodged a complaint and began investigations to apprehend the guilty. In the past six months, over half a dozen cases were reported across Bihar where women were humiliated, tortured, beaten or forced to walk naked.
>
> *(Source: Indo-Asian News Service, January 14, 2004)*

Witch-hunting persists, because of dominant classes and castes tolerate only those cultures of others, which coincide with their own views. Witch-hunting is yet another medium for gaining political and social superiority where unequal power relations between dominant class and marginalized class are being utilized to maintain the power divide.

> Two weeks ago, the villagers came searching for Sanseriya Oraow on a humid monsoon Sunday. Her neighbours dragged the middle-aged mother from her house and hammered a nail through her skull into her brain. Then, while she was still alive but in desperate pain, they sewed her up in a sack and dumped her in the nearby Murti river. Two days later, the police recovered her body.
>
> The neighbours dragged four other middle-aged women from their homes that day. Each one suffered similar treatment, nails being hammered into her head, then, in her confusion and agony, being sewn into a sack and dumped in the river to die. This was the most notorious case of recent times. The local witch doctor had proclaimed the women witches after a run of illness among the people.
>
> The place where it happened, Kilkott tea garden, is a plantation set up by the British in colonial times, and is famed for the quality of its tea. On the mountainsides nearby are the great tea gardens of Darjeeling.
>
> *(Source :Independent, 5th July 2004).*

In a substantial number of reported cases, Witch-hunting is resorted to, so as to disown the woman of her property. In many communities women have greater though not equal rights to land. Efforts to exercise those rights are thwarted by the method of declaring the woman a witch and so rob her of her right to the land. And it is not always the woman's family, which is involved.

For example, there are cases where such identification has been made when upper castes want to grab the land distributed to dalit or tribal families. Sometimes whole families are declared "witches' and are eliminated. In other cases, individual financial disputes can also be the reason for witch- naming.



Subhadra Basumatarey, a forty-five year-old woman who was declared a witch by a female *kabiraj* (witch doctor), four months ago, still cannot return to her village in the Goalpara district of Assam. Subhadra, a member of the All-India Democratic Women's Association, had challenged the obscurantist practices of local *kabirajs* (also known as *ojhas*) for which she had incurred their wrath. Further, she had demanded a share in her late father's property, challenging her stepbrother's claim to the whole property. The stepbrother and the *kabirajs* in the area developed a common interest in eliminating her, so she was declared a witch, and accused of casting a spell on three children in the village who had fallen sick.

(Source: Brinda Karat, January 14, 2001)

Political lobbies and vested interests working with their own narrow agendas among tribal or dalit communities, often use the witch doctor's position to influence tribal communities. It is in the interests of these very 'modern' political forces to preserve the position of the witch doctor.

19.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The government (the Legislature with the active support of the Executive) has played a pro-active role in enacting beneficial legislation in several areas - property rights, domestic violence, pre-natal and pre-conception sex selection - and statistical/policy making bodies are increasingly alive to the fact and complexity of gender-based discrimination (the Census of India's efforts to isolate the specificities of female sex ratio are especially commendable); and the judiciary has taken a radical view with respect to:

- Women's guardianship rights (Githa Hariharan's case),
- Sexual harassment at the workplace (Vishakha v State of Rajasthan),
- Sexual assault (the Law Commission of India's 172nd report on rape laws [2000] and the subsequent Criminal Law Amendment Act 2005 which introduced these reforms into law), and
- Communal sexual crimes and collective violence (the NHRC's report on the violence in Gujarat in 2002).

A public interest litigation is currently pending before the Supreme Court regarding the lacunae in the implementation of the *Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989*.[16] This petition is based on the social audits done of the Act by the National Human Rights Commission, Justice K. Punnayya Committee, the National Commission for Scheduled Castes and Scheduled Tribes and non-governmental organisations such as Sakshi - Human Rights Watch, National Campaign on Dalit Human Rights (NCDHR) and Centre for Dalit Rights (CDR), indicating twenty main failures in the implementation of the Act. Currently, the Supreme Court has sent notices to all state and union territory governments, the National Commission for Scheduled Castes and Scheduled Tribes and the National Human Rights Commission, directing them to submit status reports on the execution of this law.[17]

However, the situation on the ground, while it begins to get increasingly well documented, does not always demonstrate the positive impact of such governmental interest to its full capacity.

The judiciary and legislatures, for instance, have been quick to distance themselves from the question of women's entitlement to security of person and economic security within the conjugal home - arguing increasingly [in some cases amending the law] for cruelty against women under section 498 A IPC to be made compoundable and expressing reluctance [even while acknowledging the fact of cruelty] to treat marital rape as a crime.[18] The following excerpt from a judgement of the High Court of Andhra Pradesh is illustrative of the current rhetoric on 498 A.

> "...for nothing educated women are approaching the courts for divorce and resorting to proceedings against their in-laws under Section 498A IPC ...This is nothing but abuse of beneficial provisions intended to save the women from unscrupulous husbands. But it has taken a reverse trend now ...It is for the Law Commission ...to make the offence a non-cognizable one and a bailable one so that the ill educated women of this country and their parents do not misuse the provision, to harass innocent people for the sin of contacting [sic] marriage with egoistic women. We have no hesitation to hold that if this situation is continued any longer the institution of marriage and the principle one man for woman will vanish into [thin] air."[19]

The government response and assertions as might be expected constantly skirt critical issues of concern, justifying the status quo with easy recourse to platitudes about constitutional provisions and cultural stereotypes like "son preference".

> *Query of the CEDAW Committee* [Q 58]: It is a matter of concern that the sex ratio is getting adverse in India and that, even in an advanced state like Kerala, the sex ratio is getting adverse.
>
> *Response of the Indian Government:* It is a fact that the sex ratio in the country has declined to 927 in 1991 (as against 945 in 1947). This reflects 'son preference' and the historical neglect of women's health problems. However, in Kerala, the sex ratio is not adverse. As per the latest census figures, Kerala has a sex ratio of 1036 females per thousand males.

While there has been legislation like the Pre Natal Diagnostic Testing Act, the lack of political will in tackling this problem is what led to its exacerbation. Also, the lack of accountability in the medical profession, the lack of compliance by medical professionals to the law, and the reluctance of the administration to prosecute them, leads to a criminalizing of clients and impunity for the service providers.

In the case of Witch Hunting, the Police don't register most of the cases of Witch-hunting and if at all they are registered they are reported mostly under different sections of the IPC (Annexure-X). The IPC sections mainly used to register the cases are 294-Obscene acts, 34-Acts done by several persons in furtherance of common interest, 147-Rioting, 323-Voluntarily causing hurt and 506(B)- Threat to cause death or grievous harm, etc. This demands the availability of stricter and specific laws for Witch-hunting so that the accused gets punished and the nature of punishment brings in a fear in the members of the community so as not to resort to this practice the easy way in which they are practicing it now.

Despite the fact that the Government of India does not have any specific legislations to combat this social menace yet, few states in the country have started formulating legislations like the Jharkhand Resolution of Prevention of Witch Hunting, 2001 and Witch Hunting Prohibition Act of Bihar,1999. The Chhattisgarh government is now in the process of formulating a Law on the lines of these resolutions.

However, in terms of standard setting instruments for the treatment of women, even where these standards have already been set by constitutions, both the CEDAW Process and the office of the Special Rapporteur on Violence against Women are critical.

19.3. RECOMMENDATIONS

While women have suffered the most bestial forms of assault, this assault cannot be conceptually separated from the larger experience of violence of the community, since women also suffered the attacks on their children and the destruction of their property and means of livelihood, and the community suffered the attacks on the women as a critical part of the larger experience of violence. Justice for the women is tied inextricably with justice for the community. And this justice has social, legal and political ramifications that must be worked through in unison for it to be realized.

The absence of a commitment to intersectional justice both in the state and majoritarian civil society is reflected in the guarantee of legal immunity and impunity, and a conflation of the rule of law with the reign



of terror, terrorizing entire communities into silence. The rights of dalit and adivasi people and religious minorities must be protected at any cost, and the responsibility for ensuring this lies both with the state and with civil society.

Differently abled women have not figured in the deliberations of the government in any significant way. The responsibility for creating safe and secure access to public and institutional spaces lies with the government, and programmes must reflect a move away from welfare-oriented paradigms to perspectives that are based on recognition of entitlements.

Section 377 of the Indian Penal Code, which criminalizes homosexuality must be repealed in order for lesbian and bisexual women to enjoy the rights that accompany full citizenship.

Survivors of domestic violence have repeatedly spoken of being sexually assaulted by abusive husbands and partners. Yet, there is no legal remedy against such assault. Marital rape must be brought within the meaning of sexual assault, as a precondition for creating secure homes for women.

The Armed Forces Special Powers Act has wrought havoc in the North Eastern states. It must be repealed without further delay for any semblance of peace to return to the region.

Legal measures must be put in place that address collective violence. These measures must include particularly stringent provisions to deal with questions of state complicity and the perpetration of collective violence by state actors. This is especially relevant and urgent in the case of Gujarat.

Endnotes

[1] United Nations Special Rapporteur on Violence against Women, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 2002/52, Addendum 1 - International, regional and national developments in the area of violence against women 1994-2003, UN Doc.E/CN.4/2003/75/Add.1, 2003, para.16.

[2] This section is based primarily on Jayashree Mangubhai and Aloysius Irudayam, S.J., "Building a Subaltern Women's Perspective", in Kalpana Kannabiran and Ranbir Singh ed. Essays on Criminology in India, forthcoming.

[3] Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, *Fourth Report on Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs: Atrocities on Scheduled Castes and Scheduled Tribes and Pattern of Social Crimes towards Them*, New Delhi: Government of India, 2004-2005, para. 1.4.

[4] National Commission for Scheduled Castes and Scheduled Tribes, *7th Annual Report 2001-02*, New Delhi: National Commission for Scheduled Castes and Scheduled Tribes, 2002.

[5] National Commission for Scheduled Castes and Scheduled Tribes, *National SC/ST Commission 4th Report 1996-97 & 1997-98, Volume 1,* New Delhi: National Commission for Scheduled Castes and Scheduled Tribes, 1998, p.231.

[6] The violence of the classification of "disturbed area" itself is something that must form the subject of another paper, particularly in Andhra Pradesh.

[7] *Tukaram* v.*State of Maharashtra*, 1979-SCC (Cri) 381 popularly known as the Mathura judgement. Maki Bui was a Ho woman on whose behalf Manushi filed a petition in the Supreme Court of India seeking to overturn the denial of equal inheritance rights to women of the Ho tribe. For a detailed account of the case see Madhu Kishwar. 1999.

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[9] A.R. Nanda, "National Population Policy: Small Family Norm and Sex Selection", Paper presented at the Seminar on the New Paradigm of Development and Sex Selection", New Delhi, August 2004.

[10] This observation is based on a survey of judgements delivered between 1995 and 2004 conducted as part of the project "Strengthening Criminal Justice and Human Rights in India" at NALSAR University of Law, Hyderabad, 2004-2005.

[11] Bina Fernandez (Ed.), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India, Revised Edition*, India Centre for Human Rights and Law, Mumbai, 2002

[12] Exception, Section 375, Indian Penal Code.

[13] Extracted from the paper written by Shashi Sail, NAWO Madhya Pradesh for the Second Shadow Report on CEDAW.

[14] Brinda Karat, January 14, 2001

[15] Brinda Karat, January 14, 2001

[16] *National Campaign on Dalit Human Rights and others* vs. *Union of India* (WC 104/2006): PIL filed by National Campaign on Dalit Human Rights, Sakshi Human Rights Watch - Andhra Pradesh and Centre for Dalit Rights - Rajasthan in 2006.

[17] This section is based primarily on Jayashree Mangubhai and Aloysius Irudayam, S.J., "Building a Subaltern Women's Perspective", in Kalpana Kannabiran and Ranbir Singh ed. Essays on Criminology in India, forthcoming.

[18] 172nd Report of the Law Commission on Review of Rape Laws.

[19] Saritha v. R. Ramachandra, 2002 (4) ALT 592 (D.B.)



GLOSSARY

Adivasi: Forest dwellers, indigenous peoples, here Scheduled Tribes.

Anganwadi: government-run pre-school centers.

Benaami: registering land/property under false names.

Bigha: unit of measurement of land.

Dalit: Lit: "Downtrodden". Here Scheduled Castes.

Devadasi system: A custom where a young girl is dedicated to a temple or god and treated as common property to be sexually exploited by the men in the village.

Mahr: Amount given or pledged to Muslim bride by the groom at the time of marriage.

Maulvi: Muslim scholar or priest.

Mehtar: caste in Western India, primarily engaged in conservancy work.

Mukhiya: village head.

Panchayats: village level governing body.

Pattas: document of ownership conferred by government as part of a scheme.

Pucca: house made of cement and bricks, Lit: strong.

Safai Karamcharis (National Commission of): People engaged in "manual scavenging" or conservancy work. Lit: people who clean.

Sarpanch: Head of the village level governing body.

Sati Maatas: Glorifying the immolated widow (sati) by calling her maata - mother.

Sati: The practice of widow immolation.

Shariat: Muslim judicial laws.

Streedhan: Gifts given to Hindu bride by her parents or relatives at the time of marriage.

Talaq: Muslim divorce.

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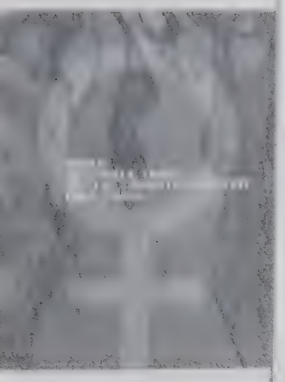
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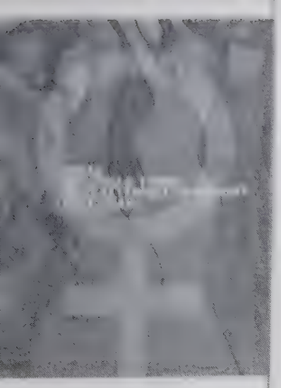
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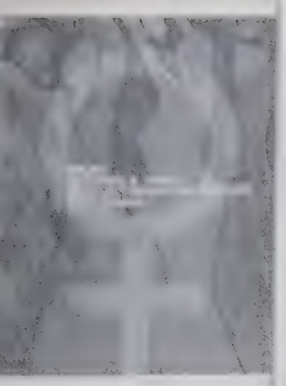
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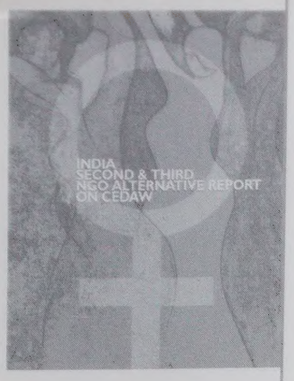
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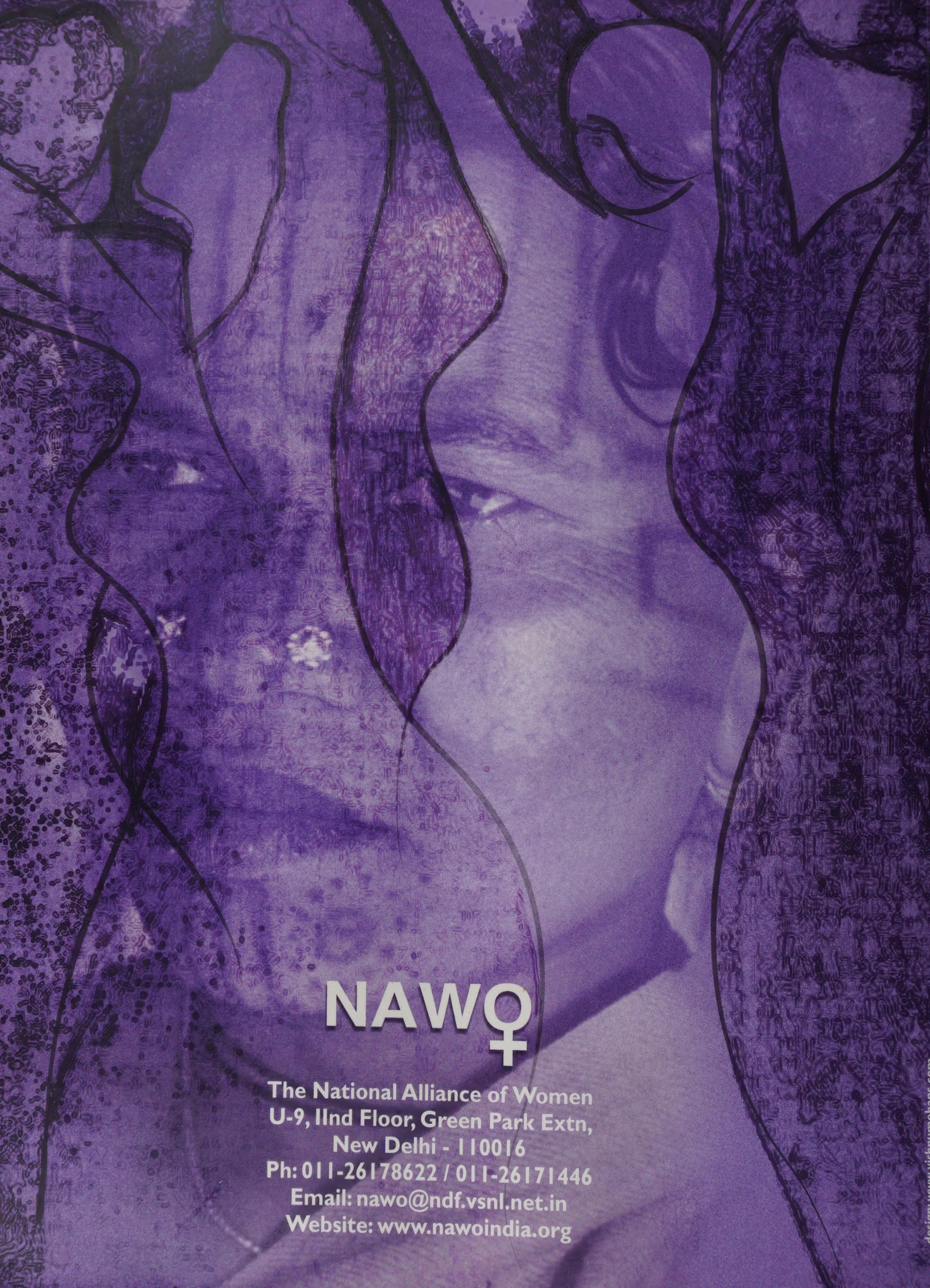
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